Supreme Court, U.S.
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04 197 JUN 4 - 2004
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No.

In The

Supreme Court of the United States

Brian Kilcullen

Petitioner

v.

Guy Lewis, et al.

Respondents

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Eleventh Circuit

WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

The underlying impetus for this equitable pursuit, is a convoluted and well-executed fraud scheme, hatched and perpetrated by federal officials, whom have available to them, the powers of seizure, afforded law-enforcement.

In this instant case, they have either, created a new constitutional tort or uncovered a constitutional flaw within the applicable statutes and capitalized on it, to effect unlawful and unconstitutional torts, against a known innocent victim.

The unjust and constitutionally prejudiced positions resulting, mandate an opinion at to equitable matters, which may have never heretofore, been placed before this court.

These are the questions which I believe appropriate, but due to my inexperience in the law, caution this Court, to look to the body of this Writ as well, for any questions which may be more to the point or inferred.

Statutory:

1.) The asset forfeiture powers, afforded federal law-enforcement, pursuant to 21 U.S.C. 841, 846, 848 & 963 are unconstitutionally inadequate, in their application, when deliberately utilized to effect a taking of private property, when it is known to the government, that said innocent owner, may not be able to prove, with the preponderance of evidence required, their property interest. I.e. when said transfer of ownership is deliberately and purposefully concealed, for the purpose of seizure or re-seizure, the "Innocent Owner's Defense" 18 U.S.C. 983(d) does not provide for any procedural due process, which would permit an owner, whom is excusably ignorant of the misuse of these statutes, to assert his Innocent Owner Status. Thereby, creating a 4th Amendment violation and 5th

Amendment Due Process deprivation anomaly, which leaves said owner no adequate remedy at law.

or

Constitutional Tort:

2.) In cases where "Innocent Owners" are excusably without the requisite documentation or proof, pursuant to 18 U.S.C. 983 (d)(6)(A), Federal law-enforcement officials (agents & prosecutors) have joined forces to enact unlawful and unconstitutional seizures of private property, which is known to them, to either, have been seized/forfeited previously or not subject to seizure at all, thereby, effecting a taking of property, in such a manner, as to place the innocent victim in a constitutionally prejudiced anomaly. Subjecting said victim, to criminal accusations and civil forfeiture proceedings, of which they were not a part of and unable to overcome, due to the principle of Res Judicata. Effecting a 4th Amendment violation and 5th Amendment deprivation in one fell swoop. A constitutional tort, not envisioned or adequately protected against, in the judiciary.

Equity:

3.) Where a corporate entity, has suffered the loss of representation, due to financial constraints, proximate to the improper conduct of an adversary and/or adversary's counsel, in litigation, said corporate owners, in their individual capacity, if unable to retain future counsel, due to said monetary losses, attributed to said improper conduct, should be permitted to appear in federal court, *pro se*, in any equitable action, pursuant to Rule 60(b), to remedy that tort/conduct alleged, to have occurred.

Equity:

4.) No equitable action, pursuant to Rule 60(b)(3) of the Federal Rules of Civil Procedure, alleging a violation of a constitutionally protected Right, should be dismissed, until such time as the plaintiff has been afforded a Full and Fair Hearing (5th Amendment Due Process) into the conduct alleged to have occurred.

5.) Courts:

All courts, whereupon, any party or litigant, whom is or has been before it, where violations of professional conduct and/or the rules of the court are alleged to have occurred, should be mandated to hold an evidentiary hearing, pursuant to Rule 11(b) of the Federal Rules of Civil Procedure accordingly.

PARTIES TO PROCEEDINGS

Guy Lewis: (Defendant)	Former US Attorney Southern District of Florida
Terrence Thompson: (Defendant)	Assistant US Attorney/Prosecutor Southern District of Florida
Laurie Rucoba: (Defendant)	Assistant US Attorney/Prosecutor Southern District of Florida
Howard Weintraub: (Defendant)	Special Agent - US Customs (Retired)
John Devaney: (Defendant)	Special Agent in Charge - DHS Ft. Lauderdale
Michael Consavage: (Defendant)	Special Agent - US Customs (Retired)
Michael Palmer: (Defendant)	Special Agent - US Customs (Retired)
EG&G, Inc.: (Defendant)	Former Parent corporation of EG&G Technical Services, Inc.
EG&G Technical Services, Inc.: (Defendant)	Formerly known as EG&G Dynatrend, Inc.
George Melton: (Defendant)	President/CEO of EG&G Technical Services, Inc.
Jerry Hawkins: (Defendant)	Employee of EG&G Technical Services, Inc.

John Dent: (Defendant)	Former employee of EG&G Dynatrend, Inc.
Roy Butler Sr.: (Defendant)	President - Capitol Beverage Co.
Roy Butler Jr.: (Defendant)	Employee of Capitol Beverage Co.
Patrick Holmes: (Defendant)	Employee of Capitol Beverage Co.
Brian Kilcullen: (Plaintiff)	President of SkyKnight Air Services, Inc.
SkyKnight Air Services, Inc.: (Plaintiff)	Administratively closed at this time.

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TABLE OF CITED AUTHORITIES

Bivens v. Six Unnamed Federal Narcotics Agents 477 U.S. 368 (1970)

Christopher v. Harbury 122 S.Ct. 2179, 2185 (2002)

Franks v Deleware 438 U.S. 154, 98 S.Ct.2674 (1978)

Fuentes v. Shevin 407 U.S. 67, 86, 92 S.Ct. 1983, 1997 (1972)

Hampton v. Hanrahan F2d. 600, 620-621 (7th Cir. 1979)

Hickman v. Taylor 329 U.S. 495, 507 (1947)

Olim v. Wakinekona 461 U.S. 253, 103 S.Ct. 1741, 1748 (1983)

Perry v. Sindermann 408 U.S. 593, 601, 92 S.Ct. 2694, 2699 (1972)

U.S. v. Gonzalez 921 F.2d 1530, 1540

U.S. v. Valera 845 F.2d 923, 929 (11th Cir. 1988)

Wood v. Carpenter
(1979) 101 U.S. (11 otto) 135, 143, 25 L.Ed. 807

STATEMENT OF JURISDICTION

The District Court, in which this equitable action was filed, dismissed this case with prejudice, on March 19th, 2003.

The affirmation of the District Court's Final Order for Dismissal (B-1), by the 11th Circuit Court of Appeals on November 5th, 2003 (A-1), prompted a Motion for Reconsideration En Banc, by the Appellant, on December 22nd, 2003. The 11th Circuit denied said Motion for Reconsideration on January 28th, 2004 (A-3) and entered the Court's opinion as mandate on February 5th, 2004. (A-4)

Plaintiff, Brian Kilcullen, sought and received an extension of time, with which to file this Writ for Certiorari, on May 5th, 2004. Permitting the filing of this Writ on or before June 4th, 2004.

The appellate basis for jurisdiction in this Writ is believed found in 28 U.S.C. 1254 (1).

The Appellant, not learned in the law, requests that this Court consider this Petition be considered for the extraordinary Writs of Mandamus, as well. As, the refusals of federal law-enforcement officials/agencies to prosecute their respective duties and responsibilities, and the refusals of the inferior court(s) to discipline those attorneys, whom have and are perpetrating fraud before them and conduct themselves in accordance with the rules, as set down by the judiciary, are a contributing factor to the deprivation of a constitutional Right and, more importantly, to the dereliction of duty on the part of federal law-enforcement agencies, evidenced within this complaint.

CONSTITUTIONAL PROVISIONS, STATUTES & REGULATIONS

The 4th Amendment of the United States Constitution, for the Right to be free from search and/or seizure of personal papers and property, without probable cause.

The 5th Amendment of the United States Constitution, for the Right to Due Process of Law, when subjected to the invasion of one's constitutionally protected Rights. (Full & Fair Hearing)

18 U.S.C. 1962 RICO

21 U.S.C. 841, 846, 848, 881, 981 &983

Federal Rules of Civil Procedure - Rule 11 (b) 1,3,4 (c)
Federal Rules of Civil Procedure - Rule 26 (d)(f)

American Bar Association ABA 3.3 & Florida Rules for Professional Conduct FL-R 4-3.3(a)(b)(c)(d) Candor Toward the Tribunal

American Bar Association ABA 3.4 & Florida Rules for Professional Conduct FL-R 4-3.4 (a)(b)(c)(d)(f)(g)(h) Fairness to Opposing Party and Counsel

American Bar Association ABA 3.8 & Florida Rules for Professional Conduct FL-R 4-3.8(a) Special Responsibilities of a Prosecutor

American Bar Association ABA 4.1 & Florida Rules for Professional Conduct FL-R 4-4.1 (a)(b) Truthfulness in Statements to Others

American Bar Association ABA 8.4 & Florida Rules for Professional Conduct FL-R 4-8.4 (a)(b)(c)(d)(f) Misconduct

STATEMENT OF THE CASE

My name is Brian Kilcullen. I, at all relevant times to this subject matter, have resided at 1208 Seminole Drive, Ft. Lauderdale, Florida. I am an expert in the buying, selling, inspecting, operating and flying of general aviation aircraft.

The following, is an account of what I experienced and witnessed, having attended a United States Department of the Treasury seized asset auction in 1997.

In March/April of 1997, I, Brian Kilcullen, did read in the international aircraft trade publication, "Trade-A-Plane", that the Department of the Treasury/US Customs Service, was going to auction an aircraft. This advertising stated that there were "No Logbooks Available" and implied that certain avionics (aircraft radios) were missing. Said advertisement stated that the showings and auction were to be conducted by EG&G Dynatrend, Inc., the contractor for the Treasury Department.

I attended both indicated showings (April 21st & 28th, 1997) and upon signing in, was permitted limited access to the aircraft, N802ME and inventory. The aircraft exhibited a number of missing avionics, but there were a considerable number of avionics evident. A small flight case and box (1) constituted the inventory for this aircraft, which contained old work-orders, invoices and two (2) out-of-date engine logbooks. Purportedly, for this aircraft's engines.

I inquired and witnessed a number of other prospective buyers inquire, as to the missing logbooks (current airframe, engine & propeller logbooks) and missing avionics. The 3 - 5 US Customs and EG&G Dynatrend, Inc. personnel, whom surrounded the aircraft and inventory at all times, responded with, "What you see, is what you get!" and/or "Perhaps an avionics shop, that may have been working on the aircraft prior to seizure, has them." When I and others requested permission

to open panels and/or conduct other cursory inspections, commensurate with a purchase of an aircraft, such as this, we were told flatly, "No."

Having done due diligence and determining that the purchase of this aircraft, for the right price, could be profitable, I attended the advertised auction, on April 30th, 1997.

I was successful in outbidding all other participants, winning the high bid, at $365,000.00. When, I paid the balance for the aircraft, at a later date, I was told that there were 10 - 11 large boxes of inventory, which would accompany the aircraft. I inquired, as to why they were not displayed with the aircraft at showing and was told that it was of no consequence, as I was the rightful owner of the aircraft, N802ME and it's inventory.

Upon receipt of these boxes, by EG&G Dynatrend, Inc. employee, John Dent, at the instruction of employee, Jerry Hawkins, I asked what they contained. John Dent replied, "I definitively do not know what they contain!" On return to my home in Ft. Lauderdale, I discovered the boxes contained, all logbooks, those represented and those missing (Airfame-2, Engines-4 & Propellers-2), all the missing avionics and approximately $7,500.00 worth of other valuable inventory. The logbooks, removed avionics and other valuable inventory, all clearly evidenced on US Customs inventory forms (6051's), affixed to the outside of the boxes. Clearly, copies of originals.

Believing, as I was told, that I was the owner and knowing that there existed no way to redo the auction process, in a manner which would be fair to all parties, I chose to go on with my business, of buying and selling aircraft, promptly putting N802ME up for sale.

An auction participant, Patrick Holmes of LEO LEASING, had provided me his card, after the auction, stating that if I were to resell the aircraft, to call him. Which, I did and at his request, provided him with a specification sheet, reflecting all logs and avionics. Other than his response, "My boss say's you're making too much money!", I had no further

contact with him.

I received a phone call from a Special Agent Jack Devaney some time later, whom inquired as to, if I had come into possession of the missing logbooks and avionics. I stated that I had acquired them. When he wanted to know from where I had acquired them, I was puzzled, as to how the US Customs Service could not see on their own paperwork, from where they came. Concerned, that the US Customs Service, might try to take the aircraft and inventory back and negate the considerable time and monies, I had expended to date and the position I had won, at auction, I requested that either the Department of Justice or US Customs, provide a letter that stated, that as long as I had not violated any laws, in the acquisition of these missing logbooks and avionics, that I would remain the rightful owner of the aircraft and inventory, prior to response. Special Agent Devaney stated that he would be back in touch.

Weeks had passed, without response from SA Devaney or anyone at US Customs and I entered into a contract to sell N802ME, to a good faith buyer, in the normal course of business. Inspections were conducted and good faith monies had been placed in escrow, by the buyer, when I learned that the US Customs Service (SA Consavage) had obtained a seizure warrant for all the logbooks and all the avionics for N802ME.

I tried to reason with SA Devaney, only to have him threaten me with obstruction of justice charges, if I did not comply. I retained counsel at my own expense (Brian Kilcullen), whom plainly told SA Consavage that their (USCS) contractor (EG&G) had turned these supposedly missing items over to me, as part of the sale of the aircraft. And, even told him that we held the USCS inventory sheets confirming same. SA Consavage made no attempt to confirm this and insisted on the seizure. On advice of hired counsel, I turned over to SA's Devaney, Consavage & Palmer of the US Customs Service Office of Internal Affairs, all logbooks for the subject aircraft,

including those represented and all avionics removed from the boxes provided. Upon doing so, SA Consavage asked if these were all the avionics for N802ME. I explained that they were not, that they were the ones not shown. He adamantly, indicated that the warrant implicitly stated all avionics, whereupon, I explained to him, that it was a cost prohibitive task, to remove everything, considered an avionic, in a complex aircraft, such as N802ME.

He, then stated, that I could consider the whole aircraft seized. He, pointedly, stated, that the aircraft could not be moved or sold.

At this point in time, I and my counsel were totally confounded as to what was transpiring. Nothing made sense and upon receipt of the affidavit, supporting seizure, it only became more confusing.

The affidavit stated that they, US Customs, had not seized any (0) logbooks or any (0) avionics, when N802ME was originally seized/forfeited. That they had sold the aircraft to me with no logbooks or avionics, that I had paid an exorbitant price, that I had communicated with a Roy Butler, Sr. (unknown at that time) and that I had requested immunity.

The affidavit claimed that, they (USCS) were seizing these logbooks and avionics, for the crimes, for which it's previous owner, Rodney Matthew's, had been prosecuted and found guilty of. That N802ME, had been forfeited to the United States, as part of said trial and that since these logbooks and avionics, belonged to the aircraft, that they constituted forfeited property, for which they were not compensated.

I know what I saw at the showings. I know what the US Customs agents and EG&G personnel saw and said. I know what the US Customs inventory forms, affixed to the boxes provided, showed. And, I know to whom I spoke, to whom I didn't and what was said and what wasn't. I was at a loss, as to why these agents/individuals were saying what they were saying, whom was responsible for the events unfolding and

how I was going to straighten this matter out.

The buyer for the aircraft, promptly, retained counsel and threatened imminent action, for non-performance of the contract in place, prior to seizure. My investment capitol (495K) was no longer mine to use. The aircraft, albeit still in my possession, was costing thousands of dollars, per month. Likewise, my hired counsel and investigators. As, I was to learn later, my credit (Brian Kilcullen's) of over $700,000.00 went to -0-, when my creditors learned of this seizure. Because, SA Consavage had telephoned the escrow agent, conducting the sale in progress and advised them, for reasons unknown, that he, US Customs had a seizure warrant for Brian Kilcullen's airplane.

Being a sole proprietor, my business was over, as I had to spend considerable time running to my lawyers office and investigate what was going on. The loss of a half a million dollars operating capitol and credit, which took decades, to attain, demanded all times and energies I could muster.

The degree of stress, I was under, was considerable, given that my property was under seizure, my credit was ruined, and the US government was stating that I was in possession of property which constituted substitute assets. Property, their contractor (EG&G), had given me, then disavowed they had. All the while, losing thousands of dollars per month.

At my behest, my counsel filed an Emergency Motion for Relief, whereby I, Brian Kilcullen, claimed possessory rights to said seized property. The Magistrate, claimed that she did not have jurisdiction and ordered, that to seek return of seized property, that I would have to file civil action.

Whereupon, after two meetings with the Assistant US Attorneys (AUSA Thompson & AUSA Lester) responsible for this seizure, where we were unsuccessful in gaining release of seized property, under advice of hired counsel, I, Brian Kilcullen, filed civil action against the United States of

America and United States Customs Service. (97-CIV-7027)

Having determined that there was some kind of misrepresentation on the part of EG&G Dynatrend, Inc., I, Brian Kilcullen, filed civil action against EG&G et al. (EG&G Dynatrend, Inc. and parent corporation, EG&G, Inc.) (97-CIV-3765)

Both these actions, named my corporate entity, SkyKnight Air Services, Inc. (SkyKnight) as party plaintiff, pending outcome of discovery.

Both these actions, were filed in order to seek return of seized property and to investigate what we believed may be a tort/constitutional violation. As, the events, individuals and/or parties, leading up to this seizure, were unknown, it was necessary to file action, in order to determine if and what action to pursue.

In spite of considerable efforts, both on my own part and that of counsel, we were unable to ascertain any information from the defendant parties. (USA/USCS & EG&G) The USA/USCS flatly refused to comply with any discovery request and EG&G stated that they were barred from providing any documents, pursuant to their contract with the USA/USCS. My aircraft, was still under seizure. I was still being threatened with action by the potential buyer. And the monies being lost were accruing daily.

If, I yelled once, I yelled it a hundred times, "How can I fight what I don't know!", to my attorneys. We were sending subpoenas and trying to ascertain, by all means possible, what was going on. By whom and how this seizure came to pass. And, both the USA/USCS and EG&G parties, were outright refusing to comply or cooperate.

The Readers Digest version of the remaining historical events of these actions should suffice here.

No discovery was ever received from the USA/USCS and EG&G's first response for production of documents, was over one year after seizure. Which having been screened by the

US government prior to release, was both unresponsive and undeterminative. Even though, US Customs did return the aircraft and seized property approximately 8 months later, without explanation, the costs and damages by that time were considerable. Due to the inability to borrow monies, as I was able to do, prior to this event, I have been unable to recover from the losses, both in monies and time.

Judge Ferguson, the presiding judge for both these cases, granted a stay of all civil proceedings, requested by the government (AUSA Thompson), under seal, for eighteen months. Citing a criminal investigation. Only days after granting the stay, he, Judge Ferguson, granted a Motion to Dismiss for the EG&G defendants, citing that no contract existed between SkyKnight and EG&G and that we could prove no set of facts to support causes of action.

Upon closing of the criminal investigation, which yielded no prosecution, the USA/USCS adamantly refused to comply with discovery and invoked sovereign immunity, citing

"in the government's view, discovery in this case is unnecessary. Regardless of any facts that the plaintiff (SkyKnight) may discover, plaintiff may not be awarded money damages by this Court under the principle of sovereign immunity. The discovery sought by the plaintiff is unwarranted, unjustified, invasive and is not necessary to a determination of the case." Defendant AUSA Rucoba

Whereupon, Judge Ferguson, shortly thereafter, summarily closed the USA/USCS (97-CIV-7027) case on jurisdictional grounds of sovereign immunity.

In spite of making payments to my counsel of record, I was advised that I owed them $92,000.00 and that in order to appeal, they would require $30,000.00 payment immediately.

Which, was not going to happen, given the considerable losses, I had already sustained to that point in time. Which was

September of 2000. Some three years after seizure. Which, without any determinative discovery, as to the seizure and no privilege logs, was the extent of this costly litigation.

The following facts are the result of an investigation, conducted over the past 6 years. The voluminous support, is comprised of US government (USCS), EG&G and other indisputable documentation and evidence.

(N802ME & Inventory - 1991 thru 1997)

1.) Assistant US Attorney Terrence Thompson, responsible for this seizure against Brian Kilcullen, was the prosecutor, responsible for the indicting, arresting and the prosecution of N802ME's former owner, Rodney Matthews. (1991 - 1994)

2.) AUSA Thompson and his case agents, SA Wilkinson (USCS) and SA Ryan (IRS), executed the seizure and inventory of N802ME in conjunction with their contractor, EG&G Dynatrend, Inc. and employees, John Dent and Jerry Hawkins. (October 31 - November 1, 1991)

3.) N802ME, was seized and inventoried, in their presence, complete with all of it's logbooks, all of it's avionics and other valuable inventory. Photographs, video's and inventory were taken. (October 31 - November 1, 1991)

4.) An appraisal was conducted by an expert in aircraft evaluation, shortly after seizure, whereupon this outside appraiser, reflected avionics, which were present in the aircraft, at that time. As well, he calculated the various component times for the airframe and engines, which he could not have done, without the full and complete logbooks for Airframe & Engines. Likewise, his appraisal clearly states all logbooks were present. (December 1991)

5.) AUSA Thompson, SA Wilkinson, SA Ryan and EG&G

Dynatrend, Inc. employee, John Dent all met together to examine and evaluate N802ME and it's inventory, clearly delineated on the USCS 6051 forms, affixed to the boxes, for upcoming trial purposes. (December 16, 1992)

6.) In the criminal trial of Rodney Matthews, EG&G Dynatrend, Inc. employee, John Dent, did testify under oath, in direct and cross-examination, as to the value of N802ME, which he placed at $750,000.00 and his possession and review of the aircraft's logbooks, to determine times in service (engines). All in the presence of prosecutor, AUSA Terrence Thompson and his case agents, SA's Wilkinson and Ryan. (November 8, 1993)

7.) In the criminal trial of Rodney Matthews, AUSA Terrence Thompson, did cross-examine defendant Rodney Matthews and utilizing an enlarged photograph of N802ME's instrument panel, did query Mr. Matthews, as to the numerous "avionics" evidenced. In closure, AUSA Thompson, did again refer to this same photograph and avionics. (December 7-10, 1993)

8.) An inventory for seized assets for US Customs was conducted by the GAO, whereupon N802ME and it's inventory, by use of the USCS 6051 form, which reflected logbooks, removed avionics and other valuable inventory, was inventoried and found to be complete. (February 22, 1994)

9.) John Dent appraises N802ME for USCS, which reflects nothing missing. (June 6, 1994)

10.) John Dent appraises N802ME for USCS, reflecting "no logbooks" and avionics missing. (April 10, 1996)

11.) John Dent advises subordinates to state "no logbooks" in advertising. (1996)

12.) EG&G Dynatrend, Inc. places advertising in Trade-A-Plane, which states that there are "No Logbooks Available" and reflects photo of avionics in instrument panel. (March -1997)

13.) EG&G Dynatrend, Inc., represented by John Dent and Jerry Hawkins and US Customs agents, display N802ME for sale, only showing two out of the eight logbooks, in their possession and withhold those removed avionics, stored in the boxes. (April 21 & 28, 1997)

14.) Roy Butler, Jr. and Patrick Holmes, on behalf of Roy Butler, Sr., are permitted to examine those withheld logbooks and removed avionics, which other showing participants, never see. (April 28, 1997)

15.) John Dent conducts an inventory of seized aircraft, at the Opa-Locka airport, to include but not limited to N802ME and inventory, with USCS agents Robert Del Toro and Anthony Caurdafe. Then (Dent) turns over possession of N802ME and it's associated inventory, to Brian Kilcullen/SkyKnight. N802ME is turned over as represented, with a majority of the avionics installed. Boxes, turned over, contain all logbooks (8), all removed avionics and other valuable inventory, as delineated on the USCS 6051 forms. (May 13, 1997)

The factual significance is indisputable. It cannot be argued. It cannot be misrepresented. Therefore, the only way to prevail, in any action, such as this, is to hide, conceal, deny and deprive. And no instant case, more than this allows such evidenced torts and crimes, to be covered up better. Because, if you go back and read the events, which I experienced, up through dismissals of previous actions, then it is easy to see why I, was excusably ignorant of parties, schemes, actions and the on-going conspiracy, which has yet to accrue.

The following are the evidenced crimes, schemes,

conspiracies and deprivations, perpetrated by this organization. They can appear somewhat daunting and convoluted, but this only plays to this criminal organizations agenda's, as they, being, in part, comprised of law-enforcement, can so easily misrepresent and/or deceive the observer. After all, whom would think that law-enforcement and prosecutors, would be involved in outright theft and fraud. Certainly, we, my counsel and I, didn't.

Factual Significance:

1.) In March/April of 1997, John Dent, Jerry Hawkins and others in the employ of the Department of Treasury contractor, EG&G Dynatrend, Inc., as part of a conspiracy to defraud the United States of America, did cause to be sent by US mail and telephonic facsimile, numerous false and fraudulent misrepresentations with respects to a seized asset aircraft, which had been placed within their care, custody and control. Advertising for auction of said aircraft, did falsely state that the subject aircraft, N802ME, had no logbooks available and was missing avionics equipment. A representation, known to John Dent, Jerry Hawkins and others, at that time, to have been false and a deliberate misrepresentation of fact, so that the full and complete logbooks and avionics within their possession could be sold to co-conspirators after said auction. Thereby, profiting from those monies purloined (18 U.S.C.641) from the United States Department of the Treasury.

2.) On April 21st & 28th, 1997, at the Opa-Locka, Florida airport, John Dent, Jerry Hawkins and other co-conspirators within the employ of both the US Customs Service and EG&G Dynatrend, Inc. did deliberately and with criminal intent, as part of said conspiracy to defraud, withhold and conceal a portion of the logbooks, avionics and other valuable inventory for N802ME, from most prospective buyers. A Roy Butler, Jr. and Patrick Holmes, were permitted access to withheld

inventory.

3.) On April 30th, 1997, N802ME was sold at auction, in Broward County, to Brian Kilcullen of SkyKnight Air Services, Inc. (SkyKnight) for the sum of $365,000.00. The co-conspirators (Roy Butler, Sr., Roy Butler, Jr. and Patrick Holmes), whom were supposed to have outbid N802ME, had withdrawn from said fraud scheme, at the last minute, allowing those bidders, unawares as to any misrepresentations, to bid amongst themselves. N802ME had been represented without the complete logbooks, avionics and other valuable equipment, within both the Department of Treasury and EG&G Dynatrend, Inc.'s cognizant possession, at that time. A loss/purloining of approximately $250,000.00 to the United States of America, as the concealment of those logbooks and avionics withheld, devalued N802ME this amount.

4.) On or about May 13th, 1997, as part of the mandated procedures for the sale of seized assets, John Dent, at the instruction of Jerry Hawkins, by and for EG&G Dynatrend, Inc., did turn over to Brian Kilcullen, all logbooks, avionics and other valuable inventory belonging to N802ME. Both those represented and those withheld. John Dent has repeatedly, denied this event.

5.) On or about, May 21st, 1997, Roy Butler Sr., as part of a scheme to falsely accuse Brian Kilcullen of fraud, did send through the US Mail, a letter to the US Customs Office of Internal Affairs, which did falsely state, that Brian Kilcullen communicated to he (Butler Sr.), information which led Butler to believe that Brian Kilcullen had defrauded the US Customs Service. Which was known to be false, when written, as Brian Kilcullen has never spoken or communicated with Roy Butler, Sr. and information which led he (Butler) to suspect/know of fraud, came from his son and pilot.

6.) On or about July 3rd, 1997, Assistant United States Attorney (AUSA) Terrence Thompson and Special Agents of the United States Customs Service - Office of Internal Affairs, Howard Weintraub, John a/k/a Jack Devaney, Michael Consavage and Michael Palmer, utilizing the "Butler Letter" did conspire with John Dent, Jerry Hawkins and other EG&G Inc. (EG&G Dynatrend, Inc. parent corp.) employees, to perpetrate a criminal fraud against Brian Kilcullen/SkyKnight.

All conspirators did agree to and have in fact, historically concealed their material knowledge and evidence within their possession alone, which showed all logbooks and avionics had been within their cognizant possession at all times from date of original seizure in October of 1991 til delivered to Brian Kilcullen on May 13th, 1997.

7.) On July 15th, 1997, AUSA Terrence Thompson and Special Agents Weintraub, Devaney, Consavage and Palmer, utilizing the "Butler Letter" and conspiracy stated above, did execute a seizure of all logbooks, avionics and personal papers for the subject aircraft, N802ME, from Brian Kilcullen/SkyKnight., stating that these logbooks and avionics had never been in their possession and therefore subject to seizure as substitute assets, pursuant to federal seizure statutes. Said seizure was done so in violation of Brian Kilcullen's 4th Amendment constitutional Right, as AUSA Thompson, the prosecutor responsible for forfeiture of said logbooks and avionics from it's original owner, had material knowledge as to the falsity of this affidavit for seizure, at that time. As well, Special Agent Consavage, had no investigation whatsoever, with which to support the numerous falsities within his affidavit.

8.) Said conspiracies were responsible for the dismissals of Brian Kilcullen/SkyKnight's civil actions to assert his 5th Amendment due process Right for having suffered a violation of his 4th Amendment Rights.

9.) Said conspiracies, still in place to this very day, were responsible for this dismissal of Brian Kilcullen's subsequent equitable action, brought to assert his 5th Amendment Right to due process of law, for all constitutional deprivations suffered.

10.) All statements, declarations, affidavits, representations and positions, effected since this matter began, violate federal criminal statutes, to include but not limited to, predicate acts of mail fraud, wire fraud, schemes to defraud, obstruction of justice and obstruction of a criminal investigation. Per federal RICO statute 18 U.S.C. 1962.

11.) All statements, declarations, affidavits, representations and positions, effected and placed before the courts, since this matter began, violate all applicable codes of professional conduct and Fed.R.Civ.P. Constituting fraud on the court, as defined by the Supreme Court of the United States.

These statements of material fact, with respects to criminal frauds and conspiracies, related above, where I, Brian Kilcullen, was not present, are made as deductions of fact. Made possible today, some 7 years after the fact, due to the enumerable fraudulent positions and statements of the defendant parties, which with out some clear and communicated plan, these numerous individuals and entities, could not have arrived at, otherwise. This is the same level of evidence required by the court's for criminal prosecution and is no less applicable to the civil RICO Conspiracy allegations involved here. Hampton v. Hanrahan F2d. 600, 620-621 (7th Cir. 1979) U.S. v. Gonzalez 921 F.2d 1530, 1540 U.S. v. Valera 845 F.2d 923, 929 (11th Cir. 1988)

As of the filing of this Writ for Certiorari, in spite of numerous presentations of criminal complaints to federal law-enforcement, no prosecution, for the evidenced fraud schemes, false statements to criminal investigators and/or enumerable

extrinsic frauds, have ever been brought. Department of Homeland Security's Office of Internal Affairs, will not even step foot in the room with me.

No individual or entity, within the United States government's employ/contract have been released.

No attorney, either defendant or representative, has ever been sanctioned and/or disciplined for the enumerable violations of professional codes and rules of the courts. In spite of a number of Motions for Sanctions, filed before, both District and Appellate Courts.

And, to date, the United States of America has not received, let alone sought, remuneration for the $250,000.00 defrauded in the sale of N802ME or the millions believed to have been lost due to the on-going criminal enterprise, still in place today.

ARGUMENT

The Rules governing this Court, state that where there has been a departure from the accepted and usual course of judicial proceedings, or a sanction of such a departure by a lower court, that this Court may invoke it's supervisory powers. Such is the case here. Where the lower courts' have sanctioned such a departure from the normal course of civil proceedings, as to abrogate the 4th & 5th Amendments to the United States Constitution and negate the Rule of Law. Relegating these courts, as mere instruments of fraud and a criminal organization.

Perhaps, this departure, in some part, is because this criminal organization, well entrenched within law-enforcement, has perfected a uniquely fashioned fraud scheme, utilizing the asset forfeiture program and statutes.

Nevertheless, no matter which way one looks at the facts, there has been and is egregious violations of federal statute and constitutionally protected Rights, for which these

inferior courts are either ill prepared or unwilling to address.

Questions 1 - 2:

It is apparent that the Civil Forfeiture Statutes, were drafted with the presumption of lawful intent, on the part of law-enforcement. Although, there exist procedures, for the assertion of one's Rights, these provisions, inevitably, place the owner or claimant to seized property, in a prejudicial position. That of proving the property's or, in some instances, one's own innocence. As, opposed to the judicial maxim, that we are innocent until proven guilty.

Whereas, this Court may have found this prejudice, acceptable, to date, this case herein, illuminates the underlying detriments, to such an opinion. For, even if it is just the property, which is arrested, it's term "property" defines ownership. Ownership translates to possession. Possession, directly calls into question the 4th Amendment. That of the right of a person or entity, to possess. In either case, a constitutional prejudice, for a person or persons, whom suffer a seizure of property.

It is in this light, that the statutory language should be interpreted, as it is exactly upon the language and this inherent constitutional prejudice, that I, Brian Kilcullen and no doubt, others, have suffered both 4th and 5th Amendment violations.

For, when law-enforcement, chooses to violate internal codes, federal statutes and constitutional Rights, by perpetrating the taking of private property, when it known to them, that said property is not subject to lawful seizure, then the resulting position, an innocent owner is placed in, is inadequately provided for in the statutes. Because, the statutory language, presupposes lawful intent upon the law and then turns around and places the burden of proof, by the preponderance of the evidence, on the victim.

The innocent owner, is without their property. It is presupposed that the property/owner is guilty. And, if as in this

scenario, the warrant is not only without probable cause, but deliberately manufactured, then the constitutional provisions, within the statutory language, leave the victim to petition the perpetrator of said unlawful act, for relief, to satisfy the statutory requirement.

That of having to prove, by a preponderance of the evidence, that they are "innocent" and "own" or have a property "interest" in said seized property. Because, to assert this violation of a constitutional right, then one has to assert their 5th Amendment Right to due process and seek discovery from the perpetrator. Whom is ensconced behind the shield of law-enforcement. An unconstitutional and prejudicial position, which is not provided for in the statutes and which leaves the innocent owner, no adequate remedy at law.

Such is the case here and less there be any doubt, as to the likelihood or probability of such a deviant occurrence, then look no further, than defendants, AUSA Thompson, AUSA Rucoba and the seizure herein.

The affidavit, supporting seizure of all logbooks and avionics for the subject aircraft, N802ME, as substitute assets, was false, known to be false when written and lacked probable cause. This seizure of private property and papers which occurred on July 15th, 1997, constituted a 4th Amendment violation.

Primarily, because the affidavit supporting seizure was without probable cause. But, in this instant case, a closer examination of the affidavit, reveals a much more sinister plan.

The affidavit was not only false for the purpose of making a seizure, but the statements therein, assigned guilt to the property, by pointing to it's previous owner's crimes and adjudication. The affidavit was seeking, not only the properties taking, but was setting up a 5th Amendment deprivation in one fell swoop.

The supposedly missing avionics and logbooks anomaly, created by John Dent, Jerry Hawkins and others, in

the course of their fraud scheme, played out perfectly to AUSA Thompson's subsequent fraud scheme. That of the taking of property, which he knew, not only to be, not subject to seizure, but the deprivation of due process, by virtue of utilizing a previous crime and adjudication, upon which to forfeit said property's interest. All that was necessary, was to enlist the agreement and participation of John Dent, Jerry Hawkins, EG&G et al. and others. Whom did and still do, disavow their possession and turning over of these supposedly missing logbooks and avionics. A criminal conspiracy of unparalleled proportions.

An examination of 21 U.S.C. 841, 846, 848 & 963, which were utilized for the purposes of this seizure and warrant, outline the crimes, for which this property, could be and was seized and forfeited, previously. An examination of 18 U.S.C. 981, outlines those properties which can be forfeited and the procedures for seizure and possession by the Attorney General. And, 18 U.S.C. 983 provides for the forfeiture proceedings, themselves. Allotting, a process for an "Innocent Owner" pursuant to 18 U.S.C. 983(d) to claim property interest, in any property seized under these statutes, for which the United States seeks forfeiture.

This scenario, created here, does not allot, for the innocent owner, any adequate procedural process by which to attain due process of law. The property seized (avionics & logbooks) was done so, not to prosecute, but to possess alone. As, the affidavit supporting seizure, assigned it's status, as having been previously adjudicated. The proceeds of criminal activity. Crimes, for which, according to the affidavit, these logbooks and avionics were already forfeited.

Here, we clearly have an Assistant US Attorney, seizing forfeited property, for which the Department of the Treasury,

had already been paid[1]. Then turning around and stating that said property, had not been seized previously, so that it can possessed, after the fact.

"A retroactive forfeiture." Thereby, bypassing due process of law and going right to possession. And if the owner (Kilcullen) want's to fight said forfeiture, the evidence, with which to do so, is peculiarly, within the hands of those whom are operating outside the law. Just so happens though, they are the law. With all the sovereign positions and powers afforded them.

This scenario created a situation, where the innocent owner (Kilcullen) is faced with the burden of proving two requisite issues. Pursuant to 18 U.S.C. 983 (d), Brian Kilcullen, must first prove his lawful possession of the logbooks and avionics. Which is an almost impossible task, as those whom sold and delivered them to him (USA/USCS & EG&G) are the ones whom hold the evidence and material knowledge, upon which to rely.

Secondly, if Brian Kilcullen, cannot show transfer of ownership, subsequent to Rodney Matthews trial, then he is under the added burden, of proving that he did not know Rodney Matthews or the crimes he committed. Essentially,

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It is irrelevant, for this argument, that N802ME, did not bring the monies, it would have, if not for John Dent's fraud scheme. As, it was unknown, by Brian Kilcullen, or anyone else for that matter, whom was actively bidding and therefore, the auction was a good-faith sale of the aircraft. What monies were lost, in the sale of N802ME, clearly were the fault of those whom participated in said scheme and no one else. The clear and unequivocal avenue, for any lawful AUSA, would have been to prosecute John Dent, Jerry Hawkins and those whom participated in said scheme. Then seek compensation from them and their company, EG&G Dynatrend, Inc.

"retroactive indictment" by virtue of possession. Once again, the proof is within the hands of the perpetrators.

The constitutionally prejudiced position, that AUSA Thompson, put Brian Kilcullen into, is without process. Yes, one might say that he could bring action and seek due process at a hearing, but that does not provide for a procedural or substantive process either.

Lest, we forget, Brian Kilcullen, did bring civil action and was unsuccessful in those pursuits. One, has only to look to 18 U.S.C. 981 (g), to see that which permitted AUSA Thompson, to protect his scheme.

This provision (g) provides for the institution of a stay of a civil forfeiture proceeding, if the court determines that civil discovery will adversely affect the ability of the government to conduct a related criminal investigation.

No, there was not a civil forfeiture proceeding, per se, at that time. But, one needs to look at this aberrant process in the light, with which it was cast. The property was being touted, as already having been adjudicated and forfeited. AUSA Thompson's Declaration, filed with the court, under seal, pursuant to subpart (g)(5), shows the means by which he chose to hide his scheme and inevitably his true intent. He already knew that John Dent, Jerry Hawkins and others, had defrauded the United States, but due to his criminal conspiracy with said individuals, it was incumbent upon him, to enact a concealment of all evidence and material knowledge, by utilizing the grand jury, the courts and this stay as bar, to any civil discovery.

And, if there be any doubt, as to the true intent of this supposed criminal investigation, then one has but to look to the end result. That of no criminal prosecution. For, to do so, AUSA Thompson would open the door for John Dent, Jerry Hawkins and EG&G et al. to attack him and reveal his own criminal conspiracy, to defraud Brian Kilcullen.

A convoluted, aberrant and criminal conspiracy and

plan, instituted by an Assistant United States Attorney. Whom did and is, utilizing his office, his Department and the sovereign powers, afforded him, to effect unlawful and unconstitutional frauds.

Either, this shows a constitutional flaw within the applicable statutory language or AUSA Thompson, has invented a new constitutional tort. In either case, a constitutional deprivation, suffered by Brian Kilcullen, whom pursuant to principles of equity and the Constitution of the United States, is entitled to due process of law and redress for all injuries sustained by this 4th Amendment violation (seizure) and subsequent 5th Amendment deprivation. Bivens v. Six Unnamed Federal Narcotics Agents 477 U.S. 368 (1970) Franks v Deleware 438 U.S. 154, 98 S.Ct.2674 (1978) Fuentes v. Shevin 407 U.S. 67, 86, 92 S.Ct. 1983, 1997 (1972) Perry v. Sindermann 408 U.S. 593, 601, 92 S.Ct. 2694, 2699 (1972) Olim v. Wakinekona 461 U.S. 253, 103 S.Ct. 1741, 1748 (1983) Christopher v. Harbury 122 S.Ct. 2179, 2185 (2002)

Questions 3 & 4:

This instant equitable action (02-60964-CIV-WJZ) and a most recent Rule 60(b) Motion for Relief From Judgement and Sanctions, pursuant to Rule 60(b)(2)(3)(6) have both been summarily dismissed/denied, without any discovery or 5th Amendment Due Process Hearing[2]. The affirmative defenses, with which all party defendants have prevailed in this action, are Standing, Pleading, Limitations and Jurisdiction. The defenses, put forth to attack Brian Kilcullen's, most recent, Motion, are, more fraud, more deceit and the principles of Res Judicata or estoppel. Essentially, "we prevailed before, therefore, we should prevail again!"

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Or any evidentiary hearing, upon which allegations of fraud and misrepresentation, could be revealed.

The principle of equity, would seem to dictate that those whom are in equity, are entitled to it. The filing of an equitable motion or action, pursuant to Rule 60(b)(2)(3)(6) of the Fed.R.Civ.P., by it's very invocation, asserts that there is new determinative evidence, not previously obtainable, that there has been some form of fraud, misrepresentation, or other misconduct of an adverse party. And, that there exist some other reason justifying relief from the operation of the judgement.

Where a litigant, is to have allegedly suffered a constitutional tort/deprivation by fraud, misrepresentation or other misconduct, pursuant to the Constitution of the United States, it would appear, not only equitable, but a subsequent constitutional deprivation, if said action/motion, were to be dismissed again, without some determination and/or adjudication on the conduct alleged to have occurred.

The filing of such a motion and/or action, pursuant to the principles of equity, would, at very least, call for a hearing, upon which to make a determination of the constitutional question raised, evidentiary value of newly uncovered evidence and/or whether misconduct occurred in the formation of the judgement.

In this instant scenario, as evidenced above, Brian Kilcullen, did suffer both a 4th Amendment taking of private property violation and a subsequent 5th Amendment due process deprivation. Upon filing of an equitable action and/or motion though, whereupon, the plaintiff alleges numerous frauds, misrepresentations and other unlawful misconduct, which he claims rises to the level of, fraud on the court, no discovery is permitted, nor inquiry or evidentiary hearing is conducted, before the court, arbitrarily, relegates said egregious accusations and acts, as frivolous. A determination of fact, without even so much as an examination of the evidence. Certainly, inequitable if said allegations, are in fact true and, nevertheless, an act not consistent with jurisprudence.

If these courts, serve any underlying precept, it would be to fairly adjudicate on the merits of the cases, before them. The finders of truth. For, without truth, the law is merely an exercise in judicial theory.

The Final Order of Dismissal, from which Brian Kilcullen appeals, is not factually correct. It is not that there has been an incorrect finding of fact. It is, that there has been no findings of fact, at all. The questions which are raised here, is how can there be any adjudication, in any civil action, where there is genuine dispute as to material facts, without discovery and a hearing. A full and fair hearing as outlined by the 5th Amendment and mandated, by this high court, for those cases where there has been a constitutional violation alleged.

Judge Zloch's order closing this action, which the 11th Circuit Court of Appeals, has affirmed, without opinion, is an utter impossibility. Brian Kilcullen was present for those events and acts, which he alleges violated his constitutional Rights. He, has conducted an extensive investigation, over a period of 6 years. The defense counsel, weren't there. Judge Zloch wasn't there. No evidentiary hearings have been conducted before the court. Yet, here we have a finding of fact, where there has never been discovery permitted or a hearing into the factual issues raised, which determines that Brian Kilcullen does not have Standing. That Brian Kilcullen, a non attorney, has not Plead properly. And, Brian Kilcullen, sat on his rights and did nothing to assert them within the applicable Statutes of Limitations. An utter abomination.

Likewise, the court has upheld the time honored ruling that a corporation cannot appear *pro se*, in federal court.

I, Brian Kilcullen, hereby state, that this is anything, but jurisprudence and the rule of law. No entity, nor person on this entire planet, would look at the facts or the filings, in this instant EQUITABLE action and arrive at such an unconstitutional and unlawful judgement.

This case begs for equity. And equity would permit a

corporation to appear in federal court, to assert it's constitutional right to due process of law, where it is alleged, that said funds necessary to secure representation[3], were lost to due to the fraudulent misrepresentations and unlawful misconduct of an adversary and their counsel, in previous litigation.

Equity, would demand, that anyone whom alleges to have suffered a constitutional deprivation, during the course of litigation, where said deprivation is alleged to have been the result of an adjudication, gained by fraud, misconduct or misrepresentation, would be entitled to, at very least, an evidentiary hearing and/or discovery, to make a factual determination of the allegations. Hickman v. Taylor 329 U.S. 495, 507 (1947) Wood v. Carpenter (1979) 101 U.S. (11 otto) 135, 143, 25 L.Ed. 807

Question 5:

The obvious necessity for these questions being raised herein, is the blatant deceits and frauds, being perpetrated upon these courts. The courts are to be the finders of truth. How can they find that which they don't mandate?

The Federal Rules of Civil and Appellate Procedure, call for the officers of the court, to conduct themselves in accordance with the court's rules and the governing codes of professional conduct. Both of which, implicitly state that the attorneys, whom appear before them, are subject to the courts inherent judicial powers, for any violations believed to be taken in bad-faith.

Yet, here we have enumerable licensed attorneys, whom appear before these federal courts, both district and appellate,

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Brian Kilcullen, utilized his and his company's funds to pay for licensed counsel, for over three years. And, still owes $92,000 to previous counsel.

whom, with total disregard for the rules of the court, codes of professional ethics and the rule of law, perpetrate unlawful and unconscionable acts, in order to prevail.

The question placed before this, last court of resort, is why do these courts, where it is alleged to have had frauds, deceits and criminal acts, to include but not limited to, fraud on the court, perpetrated upon them, not hold hearings and investigations into the determination of said allegations.

If the defendants and the Department of Justice, take issue with this question, in that they believe that it might burden the workload of these federal courts, then I suggest that the principle of getting it right the first time, may be a more economical use of these courts' and judges' time. For, these deceits, frauds and misrepresentations, have cost more than just time and monies, but the very integrity of the courts themselves.

A Grand Jury is empaneled, not to prosecute, but to shield. A false Declaration, placed before the court, not to protect a criminal investigation, but to block discovery. A knowingly false statement before the court, that discovery is unwarranted, invasive and not determinative to this case, to supplant an end-run around the law. And, finally, sovereign immunity is invoked, not because the facts support it's invocation, but to outright, deny due process of law.

All done so, to shield: criminal fraud against the United States; criminal conspiracy to defraud Brian Kilcullen of private property; and, a subsequent conspiracy to defraud Brian Kilcullen of Due Process of Law.

Abuse of Discretion:

The means by which this particular criminal enterprise, exacts it's concealment, should cause this court and this country to pause. It is self-evident, that those within law-enforcement can and have, perpetrated criminal acts. It is not necessary to overstate the obvious, why criminal elements, both within law-

enforcement and civil positions, would enact cover-ups. Nor, that officers of the court would participate, by either making misrepresentations as to material fact or facilitating said misrepresentations.

What makes this organization so unique and dangerous, is it's breadth and it's unique abuses of the rules and positions it holds. It encompasses both the Departments of Justice and Homeland Security, components therein and civil contractors, whom possess inordinate powers and/or positions, within the asset forfeiture program and law-enforcement. Affording them unparalleled powers and opportunities, never envisioned by the present statutes, rules and judiciary

The primary power of this organization is it's abilities to make false statements, utilize said falsities to enact fraud and then conceal both said false statements and acts.

The Appellant, Brian Kilcullen, hereby states that Writs of Mandamus may be necessary in order to attack this organization. For it is not only what these criminals do, but more importantly, what they choose, not to do.

This abuse of discretion, is not only criminal, but illuminates a far more damaging event. That of the abuse of the judiciary and it's processes to effect concealment.

Further, whilst John Dent, Jerry Hawkins and others, to include but not limited to, federal agents, make knowingly false statements in sworn deposition and court filings, the Department of Treasury/Homeland Security and Department of Justice abuse their discretion, yet again, by not only refusing to prosecute, but allowing said falsities to be put before the courts. Playing off said falsities and deceits, so as to enhance and/or substantiate their positions. Known fraudulent positions.

This abuse of discretion, is not only an abuse of their respective departments, but an abandonment of their positions and duties all together. Which, has and does permit this criminal organization to utilize these federal law-enforcement departments and federal courts, as instruments by which to

perpetrate their own unlawful schemes.

Effects of this Criminal Enterprise:

The effects of this criminal enterprise and it's perpetration of violations of federal statute and constitutionally protected Rights, is without a doubt, the most horrific in history.

Yes, I, Brian Kilcullen, want my day in court. Yes, I want that which the Constitution of the United States guarantees. But, that which commands and demands this high Court's attention and supervisory powers, goes far beyond Brian Kilcullen or this instant action.

Firstly, this criminal enterprise has negated the rule of law, by utilizing their sovereign positions and powers to their own personal agenda's. Criminal agenda's at that.

Secondly, the frauds perpetrated by this criminal organization have abrogated the 4th Amendment Right of the citizens of these United States to be free from seizure of private property and papers without probable cause and their subsequent 5th Amendment Right, to due process of law for any invasions of constitutionally protected Rights.

Thirdly, the utilization of these federal courts and abuse of positions, as officers of the court, in furtherance of fraud schemes, undermines the integrity of these courts and relegates them as mere instruments of fraud, instead of that which they were intended to be. A direct attack on the judiciary itself, thereby, a direct attack on our civilized society.

And, lastly, by virtue of their abandonment of the crucial law-enforcement positions they hold, the subjecting of the United States and it's citizens, to attacks, such as evidenced on September 11th, 2001.

The very core of our society and civilization is under attack. Not just by some terrorist whom have infiltrated our borders from abroad, but by those whom have infiltrated our government and police.

This criminal enterprise, evidenced herein, is without a doubt, the most egregious criminal organization, in this country's history. The mob, for whom RICO statutes were formed, has nothing on them.

The sovereign powers afforded these individuals, is not discretionary, within their own views, but by that of statute and the Constitution of the United States.

By virtue of the facts, which I hold and know to be true, those federal defendants, named herein, whom hold and/or held law-enforcement positions (agents or prosecutors), during any time periods relevant to this subject matter, not only abused their discretion with respects to outright refusals to prosecute those known to have violated federal criminal statute, but enacted complex and concerted fraud schemes and cover-ups, in order that all schemes and those involved, be concealed.

This took time. This took communications. This took concerted, well thought-out, action and inaction, on the part of all whom participated. Which did, unequivocally, deny them, law-enforcement, the ability to prosecute their duties and responsibilities, they were sworn and paid to do.

They were not at their post. They may have occupied their respective offices. They may have, even performed certain requisite duties, pursuant to their positions. But, there is no way in hell, that they could have been fully focused on the prosecution of their duties and responsibilities, at that time.

I, am a pilot, mechanic, businessman, litigant, etc... When I occupy my pilot in command seat, in flight, I cannot concentrate on upcoming legal filings or matters. When I am in negotiations in business, I cannot be thinking of mechanical difficulties or problems. To do so, is to fail in both pursuits. As, it is impossible to serve two masters, at the same time. The time of these law-enforcement components, at that time, when these frauds, conspiracies and deceits, were perpetrated, belonged to us, the People of these United States. It was not there's (defendants) to use to their own unlawful agenda's and

as it is clearly evident that they were preoccupied at that time, then it is without doubt, that we, the people of the United States, did not receive that which we paid for and more importantly, expected, was being done.

Whilst these law-enforcement individuals and entities, conspired to and enacted, said schemes to defraud, cover-up and deprive, in the Southern District of Florida, a number of the 9-11 hijackers, lived, trained and planned, the horrific events of September 11th, 2001, in the Southern District of Florida.

The President of the United States, in order to address deficiencies in federal law-enforcement, to be better prepared and able to prevent such occurrences in the future, has formed and instituted the Department of Homeland Security (DHS). A much larger and more uniformly focused department, which is supposed to eliminate inter-agency anomaly's and delays, by consolidating, under one roof, all law-enforcement agencies dedicated to the protection of our borders. In so doing, the US Customs Service was transferred from the Department of the Treasury to this new department.

Yet, due to the inability or unwillingness of law-enforcement, to cleanse themselves of these criminals, we are no better of today, as defendant SA Devaney is now the Special Agent in Charge for DHS (Ft. Laud.) and defendants, Thompson and Rucoba, are still criminal prosecutors, for the Ft. Lauderdale Office of the US Attorney.

The 9-11 Commission is seeking information on what could have been done, that wasn't, which could have prevented 9-11. I believe and I'm sure that those family members, loved ones and friends, of those whom perished on September 11th, 2001, would agree, that a sizeable contingent of federal law-enforcement agents, being pre-occupied with their own unlawful pursuits, in that same district, from which the lead terrorist launched their attack, would qualify as a contributing factor.

These are the facts. The facts, as known to me

personally. Which evidence what can and will occur again, if not for the prosecution of this criminal organization and it's participants. Those whom have participated in it's core frauds and schemes and those whom, by abuse of their discretion, condone and perpetuate it's existence. As, it is clearly evident by the actions, inactions and outright dereliction of duty, evidenced by the DHS' Office of Internal Affairs and the Departments of DHS and DOJ's Inspector General's Offices, that they are wholly unprepared and unwilling to rid themselves and their agencies, of fraud and criminal activity.

All, at our expense. These United States are not served by allowing individuals and entities to purloin millions of dollars! Justice and the American way are not served by turning a blind eye to theft and fraud! And, the security of this nation and it's citizens is not served by those whom swear an oath to the United States and it's Constitution, take payment for said positions, then abandon their post and ply their own unlawful and unconstitutional agenda, whilst occupying said positions. They cannot serve two masters. Nor are they now!

This subject matter, this case and this Writ for Certiorari, is all about the truth. Which is that this government and the lower courts, have sanctioned and condoned such an egregious and criminal departure from the lawful and constitutional execution of their duties and responsibilities, as to jeopardize our way of life, our liberty and our very lives.

Respectfully submitted,
June 4th, 2004

Brian Kilcullen, *pro se*
1208 Seminole Drive
Ft. Lauderdale, Florida, 33304
Tel: (954) 772-0200

I, Brian Kilcullen, swear that the statements and facts herein, are true and correct to the best of my knowledge and supported by numerous documents and evidence within my possession, on today's date of June 4th, 2004.

Brian Kilcullen

The foregoing instrument was acknowledged before me this 11th day of June, 2004, by Brian Kilcullen, who is personally known to me.

Signature _____
Notary Public, State of Florida

Debra S. Hiers
My Commission DD305825
Expires March 31, 2008

APPENDIX

A-1: U.S. Court of Appeals - 11th Circuit - Order

A-2: U.S. Court of Appeals - 11th Circuit - Order

A-3: U.S. Court of Appeals - 11th Circuit - Order

A-4: U.S. Court of Appeals - 11th Circuit - Mandate

B-1: U.S. District Court - Southern District of Florida
Final Order of Dismissal

A-1

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 03-12108
Non-Argument Calender

D.C. Docket No. 02-60964-CV-WJZ

BRIAN KILCULLEN,

Plaintiff-Appellant,

versus

GUY A. LEWIS,
TERRENCE THOMPSON,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Florida

(November 5, 2003)

Before TJOFLAT, DUBINA and MARCUS, Circuit Judges.

PER CURIAM:

Brian Kilcullen appeals the district court's order of March 19, 2003 dismissing this action, which presents claims under the Racketeer Influenced and Corrupt Organization Act (RICO), 18 U.S.C. 1964(c), the Supreme Court's decision in Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 395-97, 91 S.Ct. 1999, 2004-05, 29 L.Ed.2d 619 (1971), and various state laws. Stripped to its core, Kilcullen's appeal challenges the district court's holdings that (1) the district court lacked jurisdiction to review another district judge's decision, (2) Kilcullen lacked standing to assert his claims, and (3) the statute of limitations barred all but one of his claims.

The district court's March 19 order addressed each of these points comprehensively and at length. We find no error in the court's analysis or the conclusions it reached.

AFFIRMED.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

November 5, 2003

THOMAS K. KAHN
CLERK

A-2

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 03-12108

BRIAN KILCULLEN,

Plaintiff-Appellant,

versus

GUY A. LEWIS,
TERRENCE THOMPSON,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

BEFORE: TJOFLAT, DUBINA and MARCUS, Circuit Judges.

BY THE COURT:

Appellant's motion "for sanctions and disciplinary action ..." is DENIED.

The Butler Appellees' motion for sanctions against Appellant pursuant to Eleventh Circuit Rule 27-4, for filing a frivolous motion, is GRANTED in the amount of $437.50 in attorney's fees.

The EG&G Appellees' request to strike the Rule 11

letters and Affidavit of Appellant attached to Appellant's motion for sanctions is DENIED. The Court notes that it will not consider those documents in its review of the merits of this appeal.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

November 5, 2003

THOMAS K. KAHN
CLERK

A-3

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 03-12108

BRIAN KILCULLEN,

Plaintiff-Appellant,

versus

GUY A. LEWIS,
TERRENCE THOMPSON,
LAURIE RUCOBA,
HOWARD WEINTRAUB,
MICHAEL CONSAVAGE, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

ON PETITION (S) FOR REHEARING AND PETITION (S) FOR REHEARING EN BANC
(Opinion_____, 11th Cir., 19__, ____F.2d____).

Before: TJOFLAT, DUBINA and MARCUS, Circuit Judges.

PER CURIAM:

The Petition (s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition (s) for Rehearing En Banc

are DENIED.

ENTERED FOR THE COURT:

"s/ illegible"
UNITED STATES CIRCUIT JUDGE

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JAN 28 2004

THOMAS K. KAHN
CLERK

A-4

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 03-12108

BRIAN KILCULLEN,

Plaintiff-Appellant,

versus

GUY A. LEWIS,
TERRENCE THOMPSON,
LAURIE RUCOBA,
HOWARD WEINTRAUB,
MICHAEL CONSAVAGE, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

JUDGEMENT

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the judgement of this Court.

Entered: November 5, 2003
For the Court: Thomas K. Kahn, Clerk
By: Gilman Nancy

FILED

U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

Nov 5, 2003

THOMAS K. KAHN
CLERK

ISSUED AS MANDATE
FEB 05, 2004
US COURT OF APPEALS
ATLANTA, GA.

B-1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 02-60964-CIV-ZLOCH

BRIAN KILCULLEN,

Plaintiff,

FINAL ORDER OF DISMISSAL

vs.

GUY LEWIS, TERRENCE THOMPSON, LAURIE RUCOBA, HOWARD WEINTRAUB, MICHAEL CONSAVAGE, JOHN DEVANEY, MICHAEL PALMER, EG&G TECHNICAL SERVICES, INC., formerly EG&G Dynatrend, Inc., EG&G, INC., GEORGE MELTON, JERRY HAWKINS, JOHN DENT, ROY BUTLER, SR., ROY BUTLER, JR., and PATRICK HOLMES,

Defendants,

_____/

THIS MATTER is before the Court upon Defendants, Roy Butler, Sr., Roy Butler, Jr., and Patrick Holmes' Motion to Dismiss Plaintiff's Amended Complaint With Prejudice And Motion to Strike Demand For Punitive Damages (DE 77), Defendants, EG&G, Inc., EG&G Technical Services, Inc., George Melton, Jerry Hawkins and John Dent's Motion To Dismiss Plaintiff's Amended Complaint For Monetary And Injunctive Relief With Prejudice And Motion To Strike Demand For Punitive Damages (DE 78) and Defendants, Guy Lewis, Terrence Thompson, Laurie Rucoba, Howard Weintraub, Michael Consavage, John Devaney and Michael Palmer's Second Motion To Dismiss For Failure To State A Claim (DE 80). The Court has carefully reviewed said

Motions, the entire court file and is otherwise fully advised in the premises.

I. Background

Plaintiff, Brian Kilcullen (hereinafter "Kilcullen") commenced the above-styled cause by filing a Complaint For Monetary Damages (DE 1) on July 15, 2002. The Complaint (DE 1) filed by Brian Kilcullen "pro se"named as Plaintiffs "SkyKnight Air Services, a Florida Corporation and Brian Kilcullen, President", contained 335 numbered paragraphs on fifty-six (56) pages, listed nine (9) Counts against various groups of Defendants and included one hundred pages of exhibits. By prior Order (DE 15) the Court required Kilcullen and SkyKnight Air Services, Inc. (hereinafter "SkyKnight") to "file a short and plain statement of their cause of action in compliance with Rule 8 of the Federal Rules of Civil Procedure" and identified specific information that Kilcullen and SkyKnight were required to provide. Also, in that Order (DE 15) the Court noted that failure to comply with its provisions would result in dismissal. Kilcullen "pro se" on behalf of SkyKnight and himself as president filed a thirty-one (31) page response (DE 32) to the Court's Order (DE 15). Additionally, Kilcullen "pro se" on behalf of SkyKnight and himself as president filed a thirty-one (31) page "RICO Case Statement Per Local Rule 12.1" (DE 41).

Noting that a corporation cannot appear pro se, by prior Order (DE 63) the Court required SkyKnight to retain legal counsel by December 2, 2002 and stated that failure to retain counsel would result in SkyKnight's claims being dismissed. SkyKnight did not retain legal counsel, however Kilcullen filed a "Motion For Rule 24(a)-2 Intervention Of Right And/Or Rule 25(c) Substitution Of Parties" (DE 65) seeking to modify the Complaint (DE 1) and to substitute Kilcullen as a Plaintiff in place of SkyKnight. By prior Order (DE 68) the Court, noting that pro se pleadings must be construed liberally, construed Kilcullen's Motion to Intervene (DE 65) as a Motion to Amend the Complaint which the Court granted. The Court noted,

however, that Kilcullen "must establish standing for any action brought in his own name" and, in any action on behalf of SkyKnight, the corporation must be represented by an attorney. On December 27, 2002, Kilcullen acting pro se on behalf on himself only filed an Amended Complaint For Monetary Damages and Injunctive Relief (DE 73) listing, in 490 numbered paragraphs and eight five (85) pages, nine (9) Counts against various groups of Defendants and including one hundred pages of exhibits.[4] Furthermore, on January 25, 2003, Kilcullen filed a fifty (50) page "Amended RICO Case Statement Per Local Rule 12.1" (DE 79).

The Amended Complaint (DE 73), like the original Complaint (DE 1), is based on a series of events which occurred in 1997. Kilcullen is the sole employee, officer and shareholder of SkyKnight a corporation organized and existing under the laws of the State of Florida and having it's primary place of business in Broward County Florida. See DE 1, P 1; DE 73, P 8.[5] On or about October 31, 1991, a 1979 Swearingen Merlin III aircraft registration number N802ME and its associated inventory (collectively hereinafter the

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The Court notes that the Amended Complaint (DE 73) violates Fed.R.Civ.P. 8 in that it is not a "short and plain statement" of Kilcullen's claims. Moreover, by prior Order (DE 15), the Court required Kilcullen to comply with this rule. Nevertheless, as pro se pleadings are to be construed liberally, e.g. Loren v. Sasser, 309 F.3d 1296, 1301 (11th Cir. 2002), the Court will consider the factual allegations broadly and consider any cause of action which may be based thereon.

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Unless otherwise specified, the facts adopted by the Court for the purpose of this Final Order of Dismissal are those set forth by Kilcullen in his Amended Complaint (DE 73).

"aircraft") was seized by the United States Customs Service (hereinafter the "USCS") from Rodney Matthews in relation to a criminal investigation and indictment. In due course, the USCS inventoried, valued and put up for auction the aircraft. Significant to the above-styled cause, the aircraft's logbooks which are necessary for proper registration and maintenance of the aircraft were not properly inventoried. As a result, although the USCS originally appraised the aircraft as if it was accompanied by a complete set of logbooks, later inventories and valuations demonstrate an incomplete set of logbooks. Moreover, documents concerning the auction of the aircraft and the eventual price for the aircraft at auction on April 30, 1997 evidence an incomplete set of logbooks.

Defendant, EG&G Technical Services, Inc. (under its former name, EG&G Dynatrend, Inc.) was contracted by the USCS to possess and maintain the aircraft pending the outcome of the Matthews investigation and trial. EG&G Technical Services, Inc. and its parent company Defendant, EG&G, Inc. and their employees Defendants, George Melton, Jerry Hawkins and John Dent (collectively hereinafter the "EG&G Defendants") allegedly (either negligently or intentionally and as part of a conspiracy) altered USCS documents and mislead potential buyers as part of a plan to devalue the aircraft. During April 1997, the EG&G Defendants, acting on behalf of the USCS, advertised and displayed the aircraft in preparation for a public auction. Among the viewers and eventual bidders were Kilcullen on behalf of SkyKnight and Defendants, Roy Butler, Jr., and Patrick Holmes on behalf of Defendant, Roy Butler, Sr. (collectively hereinafter the "Butler Defendants"). On April 30, 1997, SkyKnight's offer of $365,000 was the high bid in an auction conducted by the EG&G Defendants and on May 13, 1997 SkyKnight took possession of the aircraft. Upon taking possession, SkyKnight discovered logbooks and other avionics not inventoried or disclosed by the EG&G Defendants and, on May 15, 1997, SkyKnight offered the aircraft for sale with complete logbooks and all associated inventory for $495,000.

After contacting SkyKnight regarding the resale of the

aircraft, Defendant, Roy Butler, Sr. contacted by telephone and sent a letter dated May 21, 1997 to Defendant, Howard Weintraub of the USCS noting Butler, Sr.'s concern regarding the "possible criminal defrauding of the U.S. Government." Soon thereafter the USCS and the Office of the United States Attorney for the Southern District of Florida commenced an investigation SkyKnight's purchase of the aircraft at auction and SkyKnight's proposed resale of the aircraft. Defendants, Howard Weintraub, Michael Consavage, John Devaney and Michael Palmer of the USCS, Assistant United States Attorneys, Defendants Terrence Thompson and Laurie Rucoba and the United States Attorney for the Southern District of Florida at the time, Defendant Guy Lewis, (collectively the "Federal Defendants") were allegedly involved in the criminal investigation and subsequent civil litigation regarding the aircraft. On June 18, 1997, SkyKnight entered into a contract to sell the aircraft to Pat Grasch of PATCO, however, the sale was stalled because of liens which interfered with title to the aircraft. On July 15, 1997, in compliance with a subpoena, SkyKnight turned the aircraft's logbooks over to the USCS and pursuant to a warrant the aircraft was seized. Soon after the seizure of the aircraft, SkyKnight allegedly could no longer "conduct business."

On July 20, 1997, Kilcullen filed an Emergency Motion For Relief From Seizure Order which, on July 30, 1997 was denied for lack of jurisdiction by United States Magistrate Judge Lurana Snow. Subsequently, on August 25, 1997, SkyKnight through legal counsel and based on the facts outlined above filed a "Complaint For Return Of Seized Property, Monetary Damages, and Injunctive Relief" against the United States and the USCS. This case was assigned to Judge Wilkie Ferguson of the United States District Court for the Southern District of Florida under docket number 97-7027-CIV. Through this Complaint, SkyKnight sought damages and injunctive relief arising out of an "unlawful seizure". A multitude of discovery issues were raised and litigated by the

parties. On September 29, 2000,[6] Judge Ferguson granted summary judgement in favor of the defendants ruling that the United States had not waived sovereign immunity to allow a property owner to seek damages for a violation of constitutional rights. Judge Ferguson subsequently granted in part the defendants' Motion to Tax Costs.

On October 27, 1997, based on the same facts outline above SkyKnight, through Legal counsel, filed, in Florida state court, a "Complaint and Demand For Trial By Jury" against EG&G, Inc. and EG&G Dynatrend, Inc. This case was removed to federal court, assigned the docket number 97-3765-CIV and transferred to Judge Ferguson. In this Complaint, SkyKnight sought relief based on Breach of Contract, Breach of Implied Contract, Negligent Misrepresentation and Tortious Interference with a Business Contract. A multitude of discovery issues were raised and litigated by the parties. On September 30, 1998, Judge Ferguson dismissed this action for failure to state a claim. Judge Ferguson subsequently denied SkyKnight's Motion For Reconsideration and granted in part the defendants' Motion To Tax Costs.

On February 9, 1998, the aircraft was released by the USCS. Though not acknowledged by Kilcullen in the Amended Complaint (DE 73), SkyKnight sold the aircraft at a profit in April, 1998. See DE 80, p.3. The remainder of the Amended Complaint's factual allegations concern interactions with the various Defendants regarding pleadings entered in and evidence offered in the two cases presented to Judge Ferguson. In the Amended Complaint and in his various responses to the instant Motions (DE Nos. 77, 78, 80[7]), Kilcullen specifically

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The Court notes that Case no. 97-7027-CIV-FERGUSON was stayed for approximately eighteen months while a criminal investigation was pending.

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The Court notes that Kilcullen's Response To

relies on alleged discovery violations which occurred during the prosecution of the two cases before Judge Ferguson as a basis for his action and as grounds to deny the instant Motions to Dismiss.

The Amended Complaint (DE 73) has nine (9) labeled Counts. Each Count, in violation of Fed. R. Civ. P. 8, includes multiple causes of action allegedly committed by all or various groups of the Defendants. The Counts are labeled: "Count I-Negligent Misrepresentation"; "Count II-Fraudulent Misrepresentation"; "Count III-Fraud In The Inducement"; Count IV-Unlawful Seizure"; "Count V-Tortious Interference With A Business"; "Count VI-Civil Conspiracy To Cover-Up Fraud, Unwarranted Seizure, Perjury And Obstruction Of Justice"; "Count VII- Fraudulent Non-Disclosure And Fraudulent Concealment"; Count VIII- Intentional Infliction Of Emotional Distress"; and "Count IX-Injunctive Relief From Court Orders Closing 97-CIV-7027 & 97-CIV-3765 And Awarding USA/USCS & EG&G Dynatrend, Inc. Tax For Costs." As a subheading to each of these Counts, Kilcullen alleges violations of the federal RICO Act, 18 U.S.C. 1962, the Florida RICO Act, Fla. Stat. ch. 772.103 and the Fourth and Fifth Amendments to the United States Constitution.

In their Motion (DE 77), the Butler Defendants suggest

Defendants Guy Lewis, Terrence Thompson, Laurie Rucoba, Howard Weintraub, John Devaney, Michael Consavage, Michael Palmer's Second Motion To Dismiss (DE 89) was filed in violation of Rule 5.1(A)(4) of the Local Rules of the United States District Court for the Southern District of Florida. Kilcullen, after the Court by prior Order (DE 87) denied his Motion for Leave to File in Excess of 20 Pages (DE 85), reduced the page margins of his pleading below one inch. As Kilcullen's Response (DE 89) merely restates arguments already before the Court, however, the Court does not strike this pleading.

five grounds upon which the Court should dismiss all or part of Kilcullen's Amended Complaint. The are: (1) Kilcullen lacks standing to pursue these causes of action, (2) the applicable statutes of limitations bar these claims, (3) failure to state a claim upon which relief may be granted, (4) the claims are barred by the doctrine of collateral estoppel, and (5) the court lacks jurisdiction to review orders issued by Judge Ferguson.

In their Motion (DE 80), the Federal Defendants suggest eight grounds upon which the Court should dismiss all or part of Kilcullen's Amended Complaint. They are: (1) failure to comply with the pleading requirements of Fed. R. Civ. P. 8, (2) Kilcullen lacks standing to pursue these causes of action, (3) the applicable statutes of limitations bare these claims, (4) the federal RICO claim has not been properly plead, (5) federal employees are not subject to state common law claims for acts within the scope of their employment, (6) Defendants, Lewis, Thompson and Rucoba as government attorneys are absolutely immune for acts within the scope of their employment, (7) the non-attorney Federal Defendants are entitled to qualified immunity, and (8) the claims are barred by the doctrine of collateral estoppel.

In their Motion (DE 78), the EG&G Defendants suggest five grounds upon which the Court should dismiss all or part of Kilcullen's Amended Complaint. They are: (1) Kilcullen lacks standing to pursue these causes of action, (2) the claims are barred by the doctrine of collateral estoppel and res judicata, (3) failure to state a claim upon which relief may be granted, (4) the applicable statutes of limitations bar these claims, and (5) the court lacks jurisdiction to review orders issued by Judge Ferguson.

II. Subject Matter Jurisdiction

Subject matter jurisdiction is a threshold issue for the Court. Steel Co. v. Citizens For A Better Env't, 523 U.S. 83, 94-95 (1998). In determining subject matter jurisdiction the Court must look to the allegations of Kilcullen's Amended Complaint (DE 73). McMaster v. United States, 177 F. 3d

936, 940 (11th Cir. 1999). The Court notes that the Eleventh Circuit requires that pro se pleadings be construed liberally. E.g. Loren, 309 F.3d at 1301; Brown v. Sikes, 212 F.3d 1205, 1209 (11th Cir. 2000). The pleadings of a pro se plaintiff, nevertheless, must comply with the jurisdictional and procedural requirements of this Court. See Taylor v. Appleton, 30 F.3d 1365, 1366 (11th Cir. 1994) (jurisdiction); Lowe v. Hart, 157 F.R.D. 550, 553 (M.D. Fla. 1994) (procedure).

A. Jurisdiction To Enjoin Or Modify Judge Ferguson's Orders

"Count IX" of Kilcullen's Amended Complaint (DE 73) "requests injunctive relief or whatever relief this Court deems just or equitable, from court orders closing 97-CIV-7027 & 97-CIV-3765 and granting previous defendants, USA/USCS and EG&G Dynatrend, Inc., Tax for Costs." This Court does not have jurisdiction to review, modify or enjoin a final order or decision of another judge in the Southern District of Florida; that is the role of the United States Court of Appeals for the Eleventh Cirsuit. See 28 U.S.C. s 1291 (2002). Accordingly, "Count *X" must be dismissed.

B. Standing

Standing is a threshold issue of jurisdiction. Warth v. Seldin 422 U.S. 490, 498-99 (1975). As stated by the United States Supreme Court:

> In its constitutional dimension, standing imports a justiciability: whether the plaintiff has made out a "Case or controversy: between himself and the defendant within the meaning of Art. III [of the United States Constitution]. This is the threshold question in every federal case, determining the power of the court to entertain the suit. As an aspect of the justiciability, the standing question is whether the plaintiff has alleged such a personal stake in the outsome of the controversy as to warrant his invocation of federal-court jurisdiction and to justify the court's remedial powers on his behalf.

> The Art. III judicial power exists only to redress or otherwise to protect against injury to the complaining part, even though the court's judgment may benefit others collaterally. A federal court's jurisdiction therefore can be invoked only when the plaintiff himself has suffered some threatened or actual injury resulting from the putatively illegal action.

Id. at 498-99.

A corporation is a legal entity and may, through legal counsel, sue and be sued. An officer or shareholder may not pro se represent a corporation. See Nat'l Indep. Theater Exhibitors, Inc. v. Buena Vista Dist. Co., 748 F.2d 1381, 1385 (11th Cir, 1985). Palazzo v. Gulf Oil Corp., 764 F.2d 602 (11th Cir. 1985). By prior Order (DE 68), the Court again advised Kilcullen of this rule of law and required that he "must establish standing for any action brought in his own name." Similarly, a non-attorney shareholder may not appear pro se in a derivative action brought on behalf of a corporation pursuant to Fed. R. Civ. P. 23.1. See First Hartford Corp. Pension Plan and Trust v. United States, 194 F.3d 1279, 1291-92 (Fed. Cir. 1999).

Kilcullen, in his Amended Complaint (DE 73), asserts standing based on two theories - (1) he is the "alter ego" of SkyKnight, see pp 9-21, and (2) for injuries he suffered in his personal capacity. See pp 23. Kilcullen's first theory is unavailing as, under applicable Florida law, "when a person chooses the privilege of doing business as a corporation, even where he is the sole shareholder, he forfeits his right to claim that he is the alter ego of the corporation." See In re Woolum, 279 B.R. 865, 870 (Bankr. M.D. Fla. 2002); see also Unichem Mfg. Co., Inc. v. Witco Chemical Corp., 522 So. 2d 98, 98 (Fla. 3d Dist. Ct. App. 1988); Resorts Int'l, Inc. v. Charter Air Ctr., Inc., 503 So. 2d 1293, 1295-96 n.l (Fla. 3d Dist. Ct. App. 1987). Accordingly, Kilcullen only has standing if he was injured in his personal capacity.

(1) State Law Claims

To determine whether a claim by a shareholder is derivative or brought in his individual capacity the Court must look to the body of the complaint and the gravamen of the injuries asserted. See Gill v. Three Dimension Sys., Inc., 87 F. Supp. 2d 1278, 1286 (M.D. Fla. 2000) (citing Alario v. Miller, 354 So. 2d 925, 926 (Fla. 2d Dist. Ct. App. 1978)); Hill v. Brady; 737 So. 2d 1243, 1244 (Fla. 5th Dist Ct. App. 1999). A derivative claim is one in which a shareholder seeks to enforce a right of action existing in a corporation - i.e. the injury sustained is the same as that sustained by any shareholder of the corporation. Gill, 87 F. Supp. 2d at 1286 (citing Leppert v. Lakebreeze Homeowners Assoc., 500 So. 2d 250, 252 (Fla. 1st Dist. Ct. App. 1986)).

In the instant matter, it is undisputed that it was Skyknight, not Kilcullen individually, which purchased, possessed and resold the aircraft and it was SkyKnight, not Kilcullen individually, which was a party to the two cases before Judge Ferguson. As a result, whatever injury stemmed from the seizure of the aircraft or the alleged discovery violations in the earlier cases, whether or not legally compensable as damages, were borne by SkyKnight and not Kilcullen individually. Claims based on these injuries, therefore, are derivative and Kilcullen lacks standing to pursue these claims in his individual capacity. See Alario, 354 So. 2d at 926; see generally Palafrugell Holdings, Inc. v Cassel, 825 So. 2d 937, 940 (Fla. 3d Dist. Ct. App. 2001) noting that "[t]he money no longer belonged to the investors individually after they deposited it into the [corporation's] account and received stock certificates. Although the investors were indirectly injured, loss of the money was a direct and primary injury to [the corporation].") Moreover, as noted above, a derivative claim cannot be pursued pro se. See First Hartford Corp. Pension Plan & Trust, 194 F. 3d at 1291-92.

All of Kilcullen's state law and common law claims rely on the injuries allegedly suffered by SkyKnight arising out of the purchase and subsequent investigation of the purchase of

the aircraft. Accordingly these claim must be dismissed. As noted above, the Amended Complaint imbeds other claims within the labeled "Counts", therefore, it is not possible for the Court to specify which Counts must be dismissed. This reasoning, however, extinguishes any case of action based on the allegations of the Amended Complaint (DE 73) except those seeking relief under the federal and Florida RICO statutes and for violations of the Fourth and Fifth Amendments.

(2) RICO Claims

Initially, the Court notes that Florida's RICO statutes, Fla. Stat. chs. 7721103, 895.05, have been interpreted using federal case law. See All Care Nursing Serv. V. High Tech Staffing, 135 F.3d 740, 745 (11th Cir. 1998); RLS Bus. Ventures, Inc. v Second Chance Wholesale, Inc., 784 So. 2d 1194, 1196 n.2 (Fla. 2d Dist. Ct. App 2001).

Under the federal RICO statute, 18 U.S.C ss 1961 et seq., a person whose injuries result merely from the defendant's unlawful acts towards a third party lacks standing. See Maiz v. Virani, 253 F.3d 641, 654 (11th Cir. 2001) (citing Bivens Gardens Office Bldg., Inc. v Barnett Banks of Fla., Inc., 140 F.3d 898, 906 (11th Cir. 1998) (hereinafter "Bivins Gardens II"). A shareholder, therefore, does not have standing for injuries visited on a corporation which was the target of a RICO violation. Id. at 654-55 (citing Bivens Gardens II, 140 F.3d at 906). A shareholder may, however, have standing in a RICO action in his/her own right if the shareholder can show that s/he was also the target of a RICO violation. Id. at 655. To establish that the shareholder individually was a target and to satisfy the principle underlying the RICO standing doctrine, Kilcullen must show that he will not be able to obtain a "double recovery" - i.e. that he will not be able to collect damages for the same violation in his capacity as n individual and in his capacity as a corporate shareholder. Id. at 656.

In Maiz, the individual plaintiffs were able to show standing apart from that of their corporations because the RICO violations were aimed at them as individuals before the

corporations were established and additional RICO violations targeted at the individual plaintiffs occurred after formation of the corporations. Id. at 655-57. In Bivens Gardens II, the plaintiffs asserted standing in their individual capacities as shareholder, a limited partner and creditor. The Eleventh Circuit held that "the test for RICO standing is whether the alleged injury was directly caused by the RICO violation", rejected the Second Circuit's looser RICO standing test of "reasonably foreseeable" harm and affirmed summary judgment because the plaintiffs lacked RICO standing in their individual capacities. Bivens Gardens II, 140 F.3d at 908.

In the instant case, Kilcullen lists his RICO injuiries as: (1) loss of $750,000 loaned to Skyknight to purchase the aircraft, (2) loss of money spent in pursuing SkyKnight's litigations, (3) loss of SkyKnight's profits when it ceased operation in 1997, (4) loss of other future profits from Skyknight and unspecified other business ventures, (5) extreme emotional distress resulting from his being the subject of a criminal investigation, the seizure of the aircraft, the threat of suit by PATCO (SkyKnight's buyer for the aircraft in July 1997), and the loss of money already noted and (6) "[l]oss of family well-being from afore mentioned distress." DE79, Kilcullen's Amended RICO Case Statement Per Local Rule 12.1, pp. 16-17. While the Court is not unsympathetic to the costs and stress resulting from being involved in a criminal investigation and civil litigation, these injuries are not direct to Kilcullen individually.[8] Monies spent by and on behalf of SkyKnight are direct losses only to SkyKnight. See Bivens Gardens II, 140 F.3d at 908. While SkyKnight and Kilcullen in

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[8] The only exception is Kilcullen's assertion that he suffered emotional harm as the subject of a criminal investigation. Emotional harm is not a compensable RICO injury and thus this exception does not foreclose dismissal of Kilcullen's claim. Grogan v. Platt, 835 F.2d 844, 847 (11th Cir. 1988).

a derivative action have standing to bring these claims,[9] allowing Kilcullen individually to bring these claims would impermissibly risk "double recovery" Maiz, 253 F.3d at 641.

Accordingly; Kilcullen's federal and state RICO claims must be dismissed for lack of standing.

(3) Civil Rights Claims

It is well established that a shareholder, even a sole corporate shareholder, does not have standing to maintain an action for civil rights violations causing injury to a corporation. See, e.g., Potthoff v. Morin, 245 F.3d 710, 717 (8th Cir. 2001); Flynn v. Merrick, 881 F.2d 446, 450 (7th Cir. 1989); E.A. Gregory v. Mitchell, 634 F.2d 199, 202 (5th Cir. 1981).[10] As noted above, Kilcullen's alleged injuries are those suffered by SkyKnight, a corporation, thus he does not have standing to pursue a civil rights claim based upon them.

C. Conclusion

Kilcullen's failure to establish standing for any of the causes of action included in his Amended Complaint (DE 73) absents this Court of jurisdiction to consider the merits of the above-styled cause. The Defendants' Motions to Dismiss (DE Nos. 77, 78, 80), therefore, must be granted.

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Though SkyKnight and Kilcullen in a derivative action would have RICO standing, the Court does not hold, or even suggest, that such a claim would succeed on the merits or even survive a motion to dismiss.

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The Court notes that decisions of the Fifth Circuit prior to September 30, 1981 have been adopted by the Eleventh Circuit as binding. Stein v. Reynolds Secs., Inc., 667 F. 2d 33, 34 (11th Cir. 1982).

III. Statute of Limitations

The expiration of the statute of limitations also blocks further consideration by the Court. If Kilcullen had alleged facts sufficient to establish standing, therefore, as discussed below with one exception the Amended Complaint must nevertheless be dismissed as time barred.

The appropriate statutes of limitations to apply to each of the state and common law causes of action listed in Kilcullen's Amended Complaint (DE 73) are set forth in Florida Statutes s 95.11. Section 95.11 provides that any action for fraud, taking or detaining property, negligence or any intentional tort must be brought within four years of the discovery of an injury resulting therefrom. Fla. Stat. ch. 95.11(3) (2003). Under applicable Florida law, a person need not know with legal certainty that a wrong has been committed to begin the running of the statute of limitations but rather the person need only have "notice of a possible invasion of their legal rights." Senger Bros. Nursery, Inc. v. E.I.Dupont du Nemours & Co., 184 F.R.D. 674, 684 (M.D. Fla. 1999) (citing University of Miami v. Bogorff, 583 So. 2d 1000, 1004 Fla. 1991) and Doe v. Cutter Biological, 813 F. Supp. 1547, 1555 (M.D. Fla. 1993), aff'd, 16 F.3d 1231 (11th Cir. 1994)). Kilcullen, like any reasonable individual, was aware of the alleged wrongs against him at the time the aircraft was seized on July 15, 1997. Kilcullen demonstrated his awareness of the possible invasion of his legal rights by bringing suit against the United States, the USCS and the EG&G Defendants later that same year. See 97-7027-CIV-FERGUSON, 97-3765-CIV-FERGUSON. More that four years passed between the date the aircraft was seized (July 15, 1997) and the date the original Complaint (DE1) in the above-styled cause was filed (July 15, 2002). Accordingly, these claims are time barred.

Similarly, Kilcullen's civil rights claims are time barred. The statute of limitations applied to civil rights claims is that applied to state claims for personal injury. See Kelly v. Serna, 87 F.3d 1235, 1238 (11th Cir. 1996) (citing Wilson v. Garcia,

471 U.S. 261 (1985)). As previously noted, under Florida law personal injury actions, whether intentional or negligent are subject to a four year statute of limitations. Fla. Stat. ch. 95.11(3). Thus Kilcullen's civil rights claims are time barred.

The statute of limitations for federal civil RICO claims is also four years. See McCaleb v. A.O. Smith Corp., 200 F.3d 747, 751 (11th Cir. 2000) (citing Klehr v. A.O. Smith Corp., 521 U.S. 179, 183 (1997)). The statute of limitations for a federal civil RICO claim begins to run when a plaintiff discovered, or reasonable should have discovered, that s/he is entitled to civil RICO damages for his/her injury. Id. More specifically, the time period begins to run when plaintiff discovered, or reasonably should have discovered, "both the existence and source of his injury, and that the injury is part of a pattern." Id. (quoting Bivens Gardens Office Bldg., Inc. v. Barnett Bank, Inc., 906 F.2d 1546, 1554-55 (11th Cir. 1990)).

Kilcullen had notice of his alleged injuries, its source and the existence of an alleged pattern on July 15, 1997 - the date of the seizure of the aircraft. On that date, he knew of the earlier misrepresentations by the EG&G Defendants regarding the aircraft's value and knew that the Federal Defendants were investigation the events leading up to the seizure. This is the core of the factual allegations upon which the federal civil RIO claim relies, thus, Kilcullen must have had notice of the injury, its source and the alleged pattern which according to the Amended Complaint ties the EG&G Defendants, the Federal Defendants and eventually the Butler Defendants together. Similarly, in McCaleb the Eleventh Circuit held that knowledge of a series of misrepresentations leading up to the discovery of an injury makes the date of the injury the day upon which the statute of limitations for a civil RICO claim begins to run. 200 F.3d at 751. It is immaterial whether Kilcullen had knowledge of the Butler letter on July 15, 1997, because, according to the facts alleged in the Amended Complaint, when the aircraft was seized he reasonably should have known of the RICO pattern based on the actions of the EG&G Defendants and the Federal Defendants alone. Moreover, the litigation-related acts which

comprise the remainder of the Amended Complaint's factual allegations cannot serve as predicate acts for a ivil RICO claim, see McMurtry v. Brasfield, 654 F. Supp. 1222, 1225-56 (E.D. Va. 1987) (citations omitted), and thus do not prolong the statute of limitations. Kilcullen's federal civil RICO claim is time barred.

Finally, the Court notes that Florida's civil RICO statute provides a five year limitations period. Fla. Stat. ch. 772.17 (2003). Kilcullen filed his original Complaint (DE 1) on the last day of the limitations period. Fla. Stat. ch. 772.17 (2003). Kilcullen filed his original Complaint (DE 1) on the last day of the limitations period. See McMillen v. Hamilton, 48 So. 2d 162, 163-64 (Fla. 1950) (holding that the statute of limitations period begins the day after the day the injury is doscovered). Assuming Kilcullen had standing to bring this claim, which as discussed above Kilcullen does not, it would not be time barred.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED as follows:

1. Defendants, Roy Butler, Sr., Roy Butler, Jr., and Patrick Holmes' Motion To Dismiss Plaintiff's Amended Complaint With Prejudice And Motion To Strike Demand For Punitive Damages (DE 77), Defendants, EG&G, Inc., EG&G Technical Services, Inc., George Melton, Jerry Hawkins and John Dent's Motion To Dismiss Plaintiff's Amended Complaint For Monetary Damages And Injunctive Relief With Prejudice and Motion To Strike Demand For Punitive Damages (DE 78) and Defendants, Guy Lewis, Terrence Thompson, Laurie Rucoba, Howard Weintraub, Michael Consavage, John Devaney and Michael Palmer's Second Motion To Dismiss For Failure To State A Claim (DE 80) be and the same are hereby GRANTED;

2. Brian Kilcullen's Amended Complaint For Monetary Damages And Injunctive Relief (DE 73) is DISMISSED with prejudice; and

3. To the extent not otherwise disposed of herein, all pending Motions are hereby DENIED as moot.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 19th day of March, 2003.

"s/WILLIAM J. ZLOCH"
WILLIAM J. ZLOCH
Chief United States District Judge

Copies furnished:

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Filed by ____ D.C.
March 19, 2003
illegible
Clerk of the Court
S.D. of Fla. Ft. Laud.

No. 04-197

IN THE

Supreme Court of the United States

BRIAN KILCULLEN,

Petitioner,

v.

GUY A. LEWIS, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS EG&G, INC., EG&G TECHNICAL SERVICES, INC., GEORGE MELTON, JERRY HAWKINS, AND JOHN DENT

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STATEMENT PURSUANT TO RULE 29.6

Respondent, EG&G Technical Services, Inc. is wholly owned by URS Corporation.

Respondent, EG&G, Inc. is now known as PerkinElmer, Inc., a publicly traded company*

---

* EG&G, Inc. and EG&G Technical Services, Inc. were related when Petitioner filed his original suit but are no longer related entities.

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INTRODUCTION

Petitioner, Brian Kilcullen's ("Kilcullen") Petition for Writ of Certiorari does not identify any basis for this Court's exercise of its very limited, narrow jurisdiction. Moreover, Kilcullen's presentation of facts, replete with events outside of any court record and without any support, paints a wildly distorted picture of the true history of this case. When stripped to its essence, this case involves two basic legal issues that neither implicate this Court's limited jurisdiction nor identify any basis for relief: first, whether the United States District Court, Southern District, correctly concluded that Kilcullen lacked standing to sue when he suffered no injury, and second, whether a corporate entity has the authority to proceed *pro se* notwithstanding an unbroken line of authority specifically holding that it does not. Kilcullen describes a fantastic conspiracy, allegedly perpetrated by various branches of government and private individuals, to deprive him of his rights. There is no merit to the outrageous proclamations and Kilcullen's Petition should be denied.

STATEMENT OF THE CASE

Skyknight Air Services, Inc. ("Skyknight"), a corporate entity, purchased at a government auction a Swearingen Merlin III aircraft, registration number N802ME (the "aircraft"). The aircraft was originally advertised for sale at the auction without a complete set of logbooks or avionics (B-1).[1] Skyknight, Kilcullen's corporation, successfully bid

1. For the Court's convenience, references will be made to Kilcullen's Appendix unless specifically designated otherwise. The factual recitation contained herein is derived from the District Court's Final Order of Dismissal, which accepted all of Kilcullen's allegations as true.

on and purchased the aircraft. After purchasing the aircraft, Skyknight obtained possession of the log books believed missing and attempted to sell the aircraft with a complete set of logbooks for profit (B-1 at 4). Kilcullen alleged that EG&G and its principals conspired to devalue the aircraft by concealing the existence of logbooks but sold Skyknight both the aircraft and the logbooks (B-1 at 4).

Upon discovering Skyknight's possession of the missing log books, the Government seized the aircraft, and Skyknight sued the United States Government and the United States Custom Service as well as EG&G, Inc., EG&G Technical Services, Inc., George Melton, Jerry Hawkins, and John Dent (collectively "EG&G"). EG&G's only role in this controversy was as an independent contractor for the government to conduct the subject auction. Otherwise, EG&G is not a government entity and did not participate in any seizure of Skyknight's aircraft or log books.

Skyknight initiated its lawsuit against EG&G and the government defendants (B1-5). Skyknight sought injunctive relief and alleged "improper seizure" against the government defendants and several discovery issues arose (B1-5-6). The civil case was stayed pending disposition of a criminal investigation (B1-6). Skyknight also sued EG&G for breach of contract, breach of implied contract, negligent misrepresentation, and tortious interference (B1-6). It filed its action in state court, but EG&G removed it and the case came before Judge Wilkie Ferguson, who also adjudicated the lawsuit against the government defendants (B1-6). As in the lawsuit against the federal defendants, several discovery disputes arose, but Judge Ferguson dismissed the action for failure to state a claim and denied Skyknight's Motion for Reconsideration (B1-6).

On February 9, 1998, the United States Customs Service released the aircraft to Skyknight, which sold it for a profit (B1-6). Skyknight then filed another lawsuit against EG&G (and the government defendants) which was assigned to District Court Judge William J. Zloch. The basis of the lawsuit, which the District Court ultimately dismissed and which resulted in the Final Order of Dismissal that is the genesis of the case now pending before this Court, rested solely on grounds that EG&G and the government defendants committed discovery violations in the previous cases before Judge Ferguson (B1-7).

Because Skyknight did not have counsel, the District Judge ordered it to obtain representation (B1-2). Skyknight refused to obtain counsel, but its President, Kilcullen, attempted to intervene to either modify the Complaint or to substitute Kilcullen in place of Skyknight (B1-2). The District Court treated Kilcullen's efforts to intervene as a Motion to Amend the Complaint and granted it, but noted that Kilcullen must establish standing to sue because Skyknight was the sole record owner of the subject aircraft (B1-2-3).

On December 27, 2002, Kilcullen filed an Amended Complaint, alleging the same facts and causes of action as the Complaint, but without including Skyknight as a party (B1-3). Kilcullen's Amended Complaint alleged nine claims for relief. Six of these claims were common law torts: negligent misrepresentation, fraudulent misrepresentation, fraud in the inducement, tortious interference with a business, fraudulent non-disclosure and concealment, and infliction of emotional distress. (B1-3). Kilcullen then relied on the alleged tortious conduct as predicate acts to seek damages

under state and federal racketeering statutes (B1-3).[2] Kilcullen relied on alleged discovery violations which occurred during the two cases before Judge Ferguson involving Skyknight as a basis for his personal causes of action. There has never been any Order suggesting that EG&G or any government agency Kilcullen sued committed any discovery violations.

After full consideration of each purported claim for relief, the District Court dismissed Kilcullen's Amended Complaint (B1-8-18). The District Court ruled that it did not have jurisdiction to grant Kilcullen injunctive relief from Judge Ferguson's Orders, concluding that "[t]his court does not have jurisdiction to review, modify or enjoin a final order or decision of another judge in the Southern District of Florida; that is the role of the United States Court of Appeals for the Eleventh Circuit." (B1-9).

The District Court dismissed the remainder of Kilcullen's claims based on its finding that Kilcullen's state and common law claims were allegedly suffered by Skyknight and not Kilcullen individually (B1-9-12). Therefore, the District Court ruled that Kilcullen lacked standing to pursue these claims (B1-9-13). The District Court made similar findings as to Kilcullen's RICO and Civil Rights Claims, concluding that Kilcullen's alleged injuries were actually those suffered by Skyknight and that Kilcullen did not have standing (B1-12-14). The District Court further concluded that the statute of limitations blocked each of Kilcullen's alleged state

2. Additionally, Kilcullen sought injunctive relief from Orders Taxing Costs issued in Case Nos. 97-7027 and 97-3765. Skyknight previously sought relief from these Orders by filing Motions in those cases. Subsequent to filing the Complaint in this case, Judge Ferguson denied Skyknight's Motions.

and common law claims for relief, as well as his civil rights claim (B1-15).

Following entry of the District Court's Final Order, Kilcullen appealed to the United States Court of Appeals for the Eleventh Circuit. The Eleventh Circuit affirmed the decision, and Kilcullen filed a Petition for Rehearing En Banc and also a Motion for Sanctions and Disciplinary Action against all defendants and their attorneys (A-1). The Eleventh Circuit denied the Petition for Rehearing En Banc and sanctioned Kilcullen for the frivolous request for sanctions and disciplinary action (A-2). Following issuance of the Eleventh Circuit's Mandate, Kilcullen filed a Motion for Rule 60(B) Relief From Judgment and Monetary Sanctions in the District Court, rearguing the case he presented to the Eleventh Circuit. District Court Judge Zloch denied the Motion. Kilcullen next filed a Motion for Reconsideration And/Or Recusal. The District Court denied this Motion as well, and Kilcullen now seeks relief in this Court (EG&G-1 and 2).

REASONS FOR DENYING THE PETITION

Although it is difficult to pinpoint Kilcullen's argument, the crux of his case is that several branches of the government have conspired to deprive him of his rights. Notably, while his claims are both outrageous and unsupported, he continues to sue EG&G, notwithstanding that it is a private entity whose only role in this controversy was to run the auction and facilitate the sale of the aircraft. The Petition is completely meritless. Neither the underlying District Court Final Order of Dismissal nor the Eleventh Circuit's affirmance thereof conflicts with any decision of this Court or any Circuit Court of Appeal. Indeed, Kilcullen never identifies any such conflict, but instead seeks *de novo* review through his

Petition of the myriad claims he advanced in his original Amended Complaint dismissed by the District Court. This is procedurally improper and his claims have no support in law or fact.

ARGUMENT

I. KILCULLEN HAS NOT IDENTIFIED ANY BASIS FOR THIS COURT'S LIMITED CERTIORARI JURISDICTION.

Kilcullen identifies no basis for this Court to exercise its narrow certiorari jurisdiction, but merely reargues the same position that has been rejected by the District Court and the Eleventh Circuit Court of Appeal. Moreover, Kilcullen has sought rehearing and reconsideration of every adverse decision he has faced. At every level, Courts have been sensitive to Kilcullen's *pro se* status and afforded him with opportunities to engage in liberal pleading. Nonetheless, Kilcullen cannot state a claim against EG&G and the District Court has correctly dismissed the Amended Complaint.

Kilcullen's challenge to the Eleventh Circuit's ruling centers upon alleged discovery violations committed by EG&G and the government defendants. Although this is unsupported and has been rejected, it does not suggest a conflict among the Circuit Courts of Appeal or present a question of federal law that remains unresolved but should be addressed. In the absence of any statement for why this Court should review this matter, the Court should deny certiorari.

II. THE UNITED STATES DISTRICT COURT AND THE ELEVENTH CIRCUIT CORRECTLY REJECTED KILCULLEN'S ARGUMENTS.

The District Court's dismissal of Kilcullen's lawsuit and the Eleventh Circuit's affirmance thereof are correct as a matter of law.

A. Kilcullen had no standing to sue.

Because Kilcullen suffered no injury, the District Judge and the Eleventh Circuit correctly determined that Kilcullen lacks standing to pursue any of the alleged claims. Standing is a threshold question in any federal case. *Warth v. Seldin*, 422 U.S. 490, 498-499 (1975). "A federal court's jurisdiction therefore can be invoked only when the plaintiff himself has suffered some threatened or actual injury resulting from the putatively illegal action." *Id.* The District Court properly recognized that Kilcullen has no standing to allege any cause of action arising from the sale and purchase of the aircraft, because he was not a party to that transaction. Skyknight, not Kilcullen, participated in the auction and ultimately purchased the aircraft. Skyknight, not Kilcullen, entered into an agreement to re-sell the aircraft to a third party. Accordingly, there exists no set of facts or circumstances under which Kilcullen could claim an individual loss based on the transaction at issue. The only reason Kilcullen attempted to amend the Complaint to name himself as the plaintiff below was a transparent attempt to circumvent the requirement that a corporation proceed with counsel. Despite the admonishment by the District Court that Skyknight hire

counsel, Kilcullen sought to evade this ruling by attempting to sue individually.[3]

Assuming that Kilcullen sued on behalf of Skyknight (the real party in interest), the District Court correctly dismissed the action because it is well settled that a corporation cannot proceed *pro se*. *See Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 201-202 (1993) ("It has been the law for a better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel."). The longstanding rule against a corporation proceeding *pro se* "ensures that a licensed attorney, an officer of the court, is responsible for conducting the corporation's litigation. It protects the court and the public from unscrupulous and irresponsible behavior." *National Indep. Theatre Exhibitors, Inc. v. Buena Vista Distrib. Co.*, 748 F.2d 602, 609 (11th Cir. 1985). An officer or shareholder may not *pro se* represent a corporation. *See Nat'l Indep. Theater Exhibitors, Inc. v. Buena Vista Dist. Co.*, 748 F.2d 602 (11th Cir. 1985); *Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381, 1385 (11th Cir. 1985).

B. Kilcullen never established any discovery violation by EG&G or any of the government defendants.

Kilcullen argues, as he did before the lower courts, that the District Court's discovery Orders reflect a conspiracy to conceal the truth and deprive him from his day in court. When Kilcullen sued below, Respondents properly objected

3. Skyknight attempted to bring an appeal before the Eleventh Circuit in the case of *Skyknight Air Services, Inc. v. EG&G Dynatrend, Inc.*, Case No. 98-05740, which the Eleventh Circuit promptly dismissed because Skyknight was not represented by counsel.

to discovery pending disposition of their successful Motion to Dismiss. Courts have held that "where the plaintiff fails to state a claim, he is not entitled to discovery merely to find out whether or not there is a factual basis for his claim." *Maguire v. Municipality of Old Orchard Beach*, 783 F. Supp. 1475, 1488 (D. Maine 1992) (citations omitted); *see also McLaughlin v. Copeland*, 455 F. Supp. 749, 753 (D. Del. 1978). This is appropriate and does not constitute fraud.

C. The statute of limitations bars Kilcullen's claims.

The District Court and Eleventh Circuit correctly concluded that the applicable statute of limitations barred Kilcullen's state and common law claims (B1-15). Pursuant to Florida Statute § 95.11, Kilcullen's fraud and negligence claims were subject to a four-year statute of limitations. The District Court concluded that Kilcullen was aware of any alleged cause of action in July, 1997 but waited until July 2002 to sue (B1-15). The District Court further noted that Kilcullen's civil rights claims were time barred under the limitations applicable to claims for personal injury. *See Kelley v. Serana*, 87 F.3d 1235, 1238 (11th Cir. 1996). The limitations period on Kilcullen's federal civil Rico claims are also barred by a four-year limitations statute. *See McCaleb v. A.O. Smith Corp.*, 200 F 3d 747, 751 (11th Cir. 2000) (B1 at 16).[4]

---

4. The District Court did conclude that Kilcullen's Florida civil Rico statute would not be time barred because he filed it within the five-year limitations period, but nonetheless dismissed the claim for lack of standing as the injury alleged occurred solely to Skyknight.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA DATED AND FILED APRIL 20, 2004

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 02-60964-CIV-ZLOCH

BRIAN KILCULLEN,

Plaintiff,

vs.

GUY LEWIS, TERRENCE THOMPSON, LAURIE RUCOBA, HOWARD WEINTRAUB, MICHAEL CONSAVAGE, JOHN DEVANEY, MICHAEL PALMER, EG&G TECHNICAL SERVICES, INC., formerly EG&G Dynatrend, Inc., EG&G, INC., GEORGE MELTON, JERRY HAWKINS, JOHN DENT, ROY BUTLER, SR., ROY BUTLER, JR., and PATRICK HOMES,

Defendants.

ORDER

THIS MATTER is before the Court upon Plaintiff, Brian Kilcullen's Motion For Rule 60(B) Relief From Judgement And Monetary Sanctions (DE 98). The Court has carefully reviewed said Motion, the entire court file and is otherwise fully advised in the premises.

Appendix A

In the instant Motion (DE 98), Plaintiff, Brian Kilcullen (hereinafter "Plaintiff") seeks relief from a prior Order (DE 93) of the Court which dismissed his claim in the entirety. That prior Order (DE 93) was also the subject of Plaintiff Notice of Appeal (DE 94) to the United States Circuit Court of Appeals for the Eleventh Circuit. On February 5, 2004, the Eleventh Circuit issued a Mandate (DE 97) affirming the prior Order (DE 93) of this Court.

The Court notes that it may grant relief from judgement for the reasons set forth in Fed. R. Civ. P. 60(b). Rule 60(b) provides in relevant part that:

> The court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, or discharged, or a prior judgment upon which

> it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment have prospective application; or
>
> (6) any other reason justifying relief from the operation of judgment.
>
> The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.

Fed. R. Civ. P. 60(b). The Court finds, however, that Plaintiff has failed to set forth a reason in his aforementioned Motion which would justify relief from the Court's Final Order of Dismissal (DE 93) under Fed. R. Civ. P. 60(b). Moreover, though designated as a motion for relief pursuant to Rule 60(b), for all intents and purposes the instant Motion (DE 98) seeks review of the Eleventh Circuit's Mandate (DE 97) affirming the prior Order of this Court. This Court, however, is bound by the Eleventh Circuit's Mandate. *See A.A. Profiles, Inc. v. City of Ft. Lauderdale*, 253 F.3d 576, 582 (11th Cir. 2001) (citations omitted).

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED that Plaintiff, Brian Kilcullen's Motion For Rule 60(B) Relief From Judgement And Monetary Sanctions (DE 98) be and the same is hereby **DENIED**.

Appendix A

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 20th day of April, 2004.

s/ William J. Zloch
WILLIAM J. ZLOCH
Chief United States District Judge

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA DATED AND FILED MAY 12, 2004

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 02-60964-CIV-ZLOCH

BRIAN KILCULLEN,

Plaintiff,

vs.

GUY LEWIS, TERRENCE THOMPSON, LAURIE RUCOBA, HOWARD WEINTRAUB, MICHAEL CONSAVAGE, JOHN DEVANEY, MICHAEL PALMER, EG&G TECHNICAL SERVICES, INC., formerly EG&G Dynatrend, Inc., EG&G, INC., GEORGE MELTON, JERRY HAWKINS, JOHN DENT, ROY BUTLER, SR., ROY BUTLER, JR., and PATRICK HOMES,

Defendants.

ORDER

THIS MATTER is before the Court upon Plaintiff, Brian Kilcullen's Motion For Reconsideration And/Or Recusal (DE 104). The Court has carefully reviewed said Motion, the entire court file and is otherwise fully advised in the premises.

In the instant Motion (DE 104), Plaintiff, Brian Kilcullen (hereinafter "Plaintiff") seeks relief from a prior Order

Appendix B

(DE 103) of the Court which denied Plaintiff's Motion for Rule 60(B) Relief (DE 98) from the prior Order (DE 93) of the Court which dismissed his claim in its entirety. That prior Order (DE 93) was also the subject of Plaintiff Notice of Appeal (DE 94) to the United States Circuit Court of Appeals for the Eleventh Circuit. On February 5, 2004, the Eleventh Circuit issued a mandate (DE 97) affirming the prior Order (DE 93) of this Court dismissing the above-styled cause.

I. Rule 60(b) Relief

A district court is justified in reconsidering a prior order pursuant to Federal Rule of Civil Procedure 60 (b) when (1) there is an intervening change of law; (2) new evidence is available; or (3) there is a need to correct clear error or manifest injustice. *Lamar Adver. of Mobile, Inc. v. City of Lakeland, Florida*, 189 F.R.D. 480, 489 (M.D. Fla. 1999). A motion to reconsider must demonstrate why the court should reconsider its prior decision and " set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision." *Socialist Workers Party v. Leahy*, 957 F. Supp. 1262, 1263 (S.D. Fla. 1997) (*quoting Cover v. Wal-Mart Stores, Inc.*, 148 F.R.D. 294, 295 (M.D. Fla. 1993)). Such a motion "is not a vehicle for rehashing arguments already rejected by the court or for refuting the court's prior decision." *Wendy's Int'l, Inc. v. Nu-Cape Constr., Inc.*, 169 F.R.D. 680, 686 (M.D. Fla. 1996).

In the instant Motion (DE 104), except in so far as it seeks recusal, Plaintiff merely rehashes the arguments contained in his previous Motion (DE 98). Accordingly, Rule 60(b) relief is unavailable.

Appendix B

II. Recusal

The instant Motion also seeks to have the undersigned recuse himself pursuant to 28 U.S.C. § 455(a). Section 455(a) provides that

> Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

28 U.S.C. § 455(a) (2003). As has been repeatedly stated by the Eleventh Circuit in applying § 455(a),

> The test for determining whether a judge's impartiality might reasonably be questioned is an objective one, and requires asking whether a disinterested observer fully informed of the facts would entertain a significant doubt as to the judge's impartiality.

Bivens Gardens Office v. Barnett Banks of Florida, 140 F.3d 898, 912 (11th Cir. 1998) (*citing Diversified Numismatics, Inc. v. City of Orlando*, 919 F.2d 382, 385 (11th Cir. 1991) and *Parker v. Connors Steel Co.*, 855 F.2d 1510, 1524 (11th Cir. 1988)); *see also Christo v. Padgett*, 223 F.3d 1324, 1333 (11th Cir. 2000) (*citing United States v. Kelly*, 888 F.2d 732, 744-45 (11th Cir. 1989)). The intent underlying § 455(a) is "to promote public confidence in the integrity of the judicial process" and "to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible." *Liljeberg v. Health Services Corp.*, 486 U.S. 847,

860, 865 (1988); *see also Parker*, 855 F.2d at 1523 (*quoting Liljeberg*, 486 U.S. at 860, 865)). Moreover, in light of the intent of the statute, disqualification should be granted where a judge would harbor any doubt concerning whether disqualification is appropriate. *Parker*, 855 F.2d at 1524 (*citing United States v. Alabama*, 828 F.2d 1532, 1540 (11th Cir. 1987)). Thus, disqualification under § 455 (a) is possible where no actual partiality, bias or prejudice for or against a party exists.

The United States Supreme Court has held, however, that "judicial rulings alone almost never constitute a valid basis for a bias of partiality motion." *Likeky v. United States*, 510 U.S. 540, 555 (1994) (*citing United States v. Grinnell*, 384 U.S. 563, 583 (1966)) . Similarly,

> opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.

Id. Taken together, this is the so-called "extrajudicial source" doctrine. *See id.* at 554; *Christo*, 223 F.3d at 1334.

The instant Motion (DE 104) states as its basis for recusal "these Orders, which ignore these detailed frauds and deceits, clearly evidences a prejudice in favor of the defendants over that of the Plaintiff." Plaintiff also complains that "[t]his Court has chastised the Plaintiff, for going outside the lines,

not pleading properly and not exercising his Rights within the Statutes, but then overlooks the frauds and deceits perpetrated before it, which make clear the need for this equitable pursuit of justice, necessitated by said frauds and deceits." Plaintiff fails, however, to demonstrate an extrajudicial expression of bias or any "deep-seated favoritism or antagonism" to satisfy the § 455 standard. Plaintiff merely bemoans the Court's prior rulings directing him to comply with the Federal Rules of Civil Procedure and holdings denying him claim on the merits. The Court's prior rulings may serve as the basis for appeal,[1] but do not constitute a basis for recusal. *See Likeky*, 510 U.S. at 555 (*citing Grinnell*, 384 U.S. at 583)

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED that Plaintiff, Brian Kilcullen's Motion For Rule 60(B) Relief From Judgement And Monetary Sanctions (DE 98) be and the same is hereby **DENIED**.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 12th day of May, 2004.

s/ William J. Zloch
WILLIAM J. ZLOCH
Chief United States District Judge

---

1. Again, the Court notes that Plaintiff appealed the prior Order (DE 93) of the Court dismissing the above-styled action and that the Eleventh Circuit issued a Mandate (DE 97) rejecting Plaintiff's appeal and affirming the holding of the Court.

Supreme Court, U.S.
FILED
NOV 8 - 2004
OFFICE OF THE CLERK

(2)

No. 04-197

In The

Supreme Court of the United States

Brian Kilcullen

Petitioner

v.

Guy Lewis, et al.

Respondents

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Eleventh Circuit

REPLY BRIEF FOR PETITIONER BRIAN KILCULLEN

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Bivens Gardens Office Bldg. v. Barnett Bank 906 F2d. 1546, 1556 (11th Cir. 1990)

Brooks v. Blue Cross & Blue Shield of Fla. 116 F3d. 1364, 1369 (11th Cir.1997)

Divittorio v. Equidyne Extractive Industries, Inc. 822 F2d. 1242, 1247 (2nd Cir. 1987)

Hishon v. King & Spalding 467 U.S. 69,73 104 S. Ct. 2229 (1984)

Holmberg v. Armbrecht , 327 U. S. 392, 397 (1946),

Hospital Bldg. Co. v. Trustees of Rex Hospital 425 U.S. 738 (1976)

Maiz v. Virani 253 F.3d. 641, 655 (11th Cir. 2001)

Schlick v. Penn-Dixie Cement Corp. 507 F2d. 374, 379 (2nd Cir. 1974) 421 U.S. 976 (1975)

Sedima S.P.R.L. v. Imrex Co., Inc. 473 U.S. 479 (1985)

TABLE OF APPENDICES

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Appendix B: SA Consavage Deposition Excerpt

Appendix C: ASG Letter- November 1st, 2004

DOCKET

I, Brian Kilcullen, filed this Petition for Writ of Certiorari, on June 4th, 2004. Said Writ, sworn to under oath, outlines a cleverly perpetrated fraud and constitutional deprivation scheme, utilizing the Asset Forfeiture Program and Civil Forfeiture Statutes. In which, a number of federal officials, civil contractors and individuals have and are participating. The historical facts of this case, through present day, show a concerted effort by multiple individuals and entities to conceal said scheme, by putting forth and agreeing to clearly documented false and fraudulent misrepresentations.

BUTLER DEFENDANTS

The Butler Defendants, represented by Richard Guiffreda, have waived their right (August 23rd, 2004) to Respond, per Supreme Court Rule 15.

It should be noted, that Roy Butler, Jr. and Patrick Holmes, on behalf of Roy Butler, Sr., are sworn to have had unlawful access to logbooks and avionics (Petitioner's Writ - page 10, item #14), which had been deliberately and criminally, withheld from all other auction participants. To include myself, Brian Kilcullen. Documented by an EG&G "Property Access Register" for seized inventory, which does not reflect any other viewers/bidders other than Roy Butler, Jr. and Patrick Holmes, being permitted to access these supposedly missing items.

Further, Roy Butler, Sr. is stated to have sent a knowingly false and fraudulent letter, by US Mail (See Appendix A), to the US Customs Service. Which, I can and have attested to as such, under oath, as Roy Butler, Sr. and I, have never spoken, as alleged by the Roy Butler, Sr. letter.

Hence the wise decision by counsel, Richard Guiffreda, to Waive their rights to Respond.

FEDERAL DEFENDANTS & THE UNITED STATES of AMERICA

The Acting Solicitor General (ASG), Paul Clement, made appearance as counsel, for both the United States of America and the Federal Defendants on September 1st, 2004, waiving their right to Respond to this Writ for Certiorari.

In spite, of the enumerable violations of federal statute and constitutional rights, outlined, on the part of said Federal Defendants. Federal Defendants, whom have and are refusing to prosecute those (EG&G) whom have defrauded the United States of America. A conflict of unparalleled proportions.

EG&G DEFENDANTS

The EG&G Defendant parties, under the representation of counsel, Neil Linden and Jack Reiter, did respond to the Petitioner's Writ, on October 27th, 2004.

Said Response, sent by US Mail, was only sent to Richard Giuffreda, for the Butler Defendants, myself, Brian Kilcullen and the Clerk of the Court. In violation of Supreme Court Rule 29, no service was made upon the Acting Solicitor General.

This Response, sent through the US Mail, constitutes a violation of the federal Mail Fraud Statute, 18 U.S.C. 1341. (See Appendix A) Said Response, contains false and misleading statements of fact, known to be false, at the time of it's writing. Designed to make available to the EG&G Defendants, affirmative defenses, which they would otherwise, not be eligible for.

FRAUD ON THE COURT

I, Brian Kilcullen, do not allege, the crimes, deprivations or conspiracies, stated in the Writ. I don't have to. I am the aggrieved party. I was there. I saw, heard and witnessed everything that transpired or not, as the case may be. Therefore, I know the position, that all parties and their counsel's were

placed in, when faced with this factual and supported Writ for Certiorari.

The refusal of the Butler and Federal Defendants, to respond in this matter, where according to Supreme Court Rule 15.2, that; "Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition." is evidence of the dilemma placed upon the defendant parties.

Respond to the Writ and they have to lie. Refuse to Respond and they have to stand silent where criminal acts and conspiracies are directed towards them. The Butler and Federal Defendants, erred on the side of caution and pray that this high court, does not grant Brief or invoke supervisory jurisdiction.

The EG&G Defendants, on the other hand, chose not to stand silent, but just as in the inferior courts, from which this Petition is taken, have chosen to repeat their fraudulent, unsupported deceits, in order to discredit myself, Brian Kilcullen.

They are, for all intensive purposes, locked into the deceits and frauds which they have perpetrated from the start. They cannot escape the web of deception, they have worked themselves into.

As a basis for these frauds, deceits and conspiracies, I have pointed to the unwavering position, that I obtained the supposedly missing logbooks and avionics, of which this subject matter revolves about, from the hands of John Dent, by and for EG&G et al., as part of the sale of N802ME.

Lest, there be any doubts, the Petitioner, has provided relevant excerpts from SA Consavage's deposition. Where, although Mr. Consavage's loyalties are brought into question, his factual findings, as the criminal investigator in this matter, completely and unequivocally contradict the EG&G Brief in Opposition.

If this court should direct it's focus to anything in this Petition, this should be it. As, it is precisely upon this point that

all defenses, representations and constitutional rights lie.

If, I, Brian Kilcullen, as sworn to within the Writ, and supported by the attached Consavage Excerpts, obtained the missing logbooks and avionics, from EG&G et al., then it is without doubt, that the representations to this high court, within the EG&G et al. Brief in Opposition (Pages 1 & 2), are false and deliberately put forth, in order to perpetrate and perpetuate an extrinsic fraud. (See Appendix C - ASG Letter)

There exist no middle ground. Either I, Brian Kilcullen am guilty of Mail Fraud and Fraud on the highest court in the land or EG&G et al. is. If for no other reason, the Supreme Court of the United States, should invoke supervisory jurisdiction and conduct evidentiary or Rule 11(b) hearings, in order to preserve the integrity and credibility of the Judiciary.

It should be noted, that the ASG's refusal to respond, in this matter and the lack of service on the ASG, by the EG&G Defendants, for their blatantly false RESPONSE, is conveniently orchestrated, such that these entities, which have and are denying acting in concert, do not contradict one another, before this high court. Permitting, the EG&G Defendants, to put forth their fraudulent misrepresentations, unchallenged.

Nevertheless, ASG, Paul Clement, has been advised of these false statements, misrepresentations and schemes. (See Appendix C) Likewise, supplied a copy of the EG&G RESPONSE, by myself, Brian Kilcullen, on November 1st, 2004. In as strong a language, as possible, I have advised the ASG, whom is supposedly acting in the interest of the United States, that his refusal to Respond (Waiver of Right) and permitting of these knowingly false statements of material fact, to appear before this high court, is both inappropriate and in furtherance of a scheme to defraud. That is, to further the scheme of both the EG&G and Federal Defendants, to conceal criminal acts and conspiracies, which invariably deprive me, Brian Kilcullen, Due Process of Law. An unlawful act and

scheme, being played out before the Supreme Court of the United States.

Which, if not justification for this high court's invocation of it's supervisory powers, nothing is!

CONSTITUTIONAL DEPRIVATION

Here we have an equitable RICO action, where discovery of the material facts, has never taken place. Where, the defendant parties (3), in spite of allegations of conspiracy, have all acted in concert to obstruct discovery and the civil process. And, where there has never been any type of evidentiary or Due Process hearing before any court.

A greater example of a Catch 22 type fraud, could not be found. I am supposed to have known, in July of 1997, that these defendant parties, whom I had never met, nor interacted with, had material knowledge as to the falsity of their acts and positions. That they were in possession of evidence, which, somehow, I am supposed to have known existed, even though said evidence, was exclusively in possession of federal law-enforcement. Evidence they have and are, still to this very day, refusing to proffer. And, that said evidence, which has taken the Petitioner, six (6) years to accrue, points to acts of Constitutional Deprivations, Criminal Fraud and Racketeering. All of which, give the Petitioner Causes of Action, upon which to hold the defendant parties liable, at that time.

A 12 (b)(6) motion to dismiss for failure to state a claim upon which relief can be granted, the complaint must be construed in the light most favorable to the plaintiff, and all facts as alleged by the plaintiff must be accepted as true. Hishon v. King & Spalding 467 U.S. 69,73 104 S. Ct. 2229 (1984) Brooks v. Blue Cross & Blue Shield of Fla. 116 F3d. 1364, 1369 (11th Cir.1997)

Any person injured in his business by a RICO violation may bring a private action under the RICO statute. 18 U.S.C. 1964(c)

The language is interpreted broadly to include any injury to business resulting from the predicate acts. Sedima S.P.R.L. v. Imrex Co., Inc. 473 U.S. 479 (1985)

The 11th Cir. Has held that a civil RICO cause of action begins to accrue as soon as the plaintiff discovers, or reasonably should have discovered, both the existence and source of his injury and that the injury is part of a pattern. Bivens Gardens Office Bldg. v. Barnett Bank 906 F2d. 1546, 1556 (11th Cir. 1990)

In rejecting pattern discovery as a basic rule, we do not unsettle the understanding that federal statutes of limitations are generally subject to equitable principles of tolling, see Holmberg v. Armbrecht , 327 U. S. 392, 397 (1946), and where a pattern remains obscure in the face of a plaintiff's diligence in seeking to identify it, equitable tolling may be one answer to the plaintiff 's difficulty, complementing Federal Rule of Civil Procedure 11(b)(3). See ibid.; see generally Klehr , 521 U. S., at 192 -193 (noting distinctions between different equitable devices).

However, the requirement of pleading fraud with particularity is relaxed where the particulars of the fraud claims are peculiarily within the knowledge of the defendants. Divittorio v. Equidyne Extractive Industries, Inc. 822 F2d. 1242, 1247 (2nd Cir. 1987) Schlick v. Penn-Dixie Cement Corp. 507 F2d. 374, 379 (2nd Cir. 1974) 421 U.S. 976 (1975)

"And in trust cases, where the proof is largely in the hands of the alleged conspirators" Poller v. CBS 368 U.S. 464, 473 (1962) "dismissals prior to giving the plaintiff ample opportunity for discovery should be granted sparingly." Hospital Bldg. Co. v. Trustees of Rex Hospital 425 U.S. 738 (1976)

Any plaintiff who is blamelessly ignorant of the existence or cause of his injury, should be accorded the benefits of the more liberal equitable tolling standard. Barrett v. U.S. 689 F2d. 324, 327 (2nd Cir. 1982) 462 U.S. 1131, 103 S.Ct. 3111 (1983)

There is no bright-line rule for determining standing when an individual, who is also a corporate shareholder sues to recover for a *RICO act violation that affects both the individual and the* corporation, the inquiry is inherently fact-specific. Maiz v. Virani 253 F.3d. 641, 655 (11th Cir. 2001)

"Whether a plaintiff has standing to assert a RICO claim is a threshold legal issue subject to de novo review. Andrews v. American Tel. & Tel. Co. 95 F3d. 1014, 1022 (11th Cir. 1996)

CONSTITUTIONAL MANDATE

The uncontested fact, that there has been a taking of private property, mandates due process of law. Due Process has been adjudicated, by this high court, as the permitting of an aggrieved party, to investigate their case and a due process hearing in that regard. The record, in this matter, is absent any discovery of the true operative facts and any hearing whatsoever, before a court of law. This is a direct and unequivocal violation of my 5th Amendment Due Process Right. Which properly grants this Court jurisdiction and mandates this Court's supervisory powers.

If this Court, denies Brief, it denies the citizens of this country, the very basis of their constitutional rights. That of the Right to be free from invasions of ones person, property and/or papers, without probable cause. For, if the government can execute seizures of persons/property and/or papers, without ever having to support said affidavits, then the 5th Amendment Due Process clause is without meaning.

SUMMARY

Justices of the Supreme Court of the United States. The case before you is fraught with violations of federal statute, constitutional rights and fraud on these federal courts. You have, but to scratch the surface to uncover one of the most egregious threats to our civil society. Invoke your supervisory powers and see that which all defendants would conceal, deny and shield. Do not and permit this criminal enterprise, before you, to negate the that which you derive your powers from and that to which you are sworn. The Constitution of the United States.

I, Brian Kilcullen, respectfully request that the Supreme Court of the United States, invoke it's supervisory powers and fully investigate and adjudicate this criminal matter. For, it is without doubt, that if the Supreme Court of the United States, like the inferior courts below, would permit fraud to be perpetrated upon it, then the Court itself and the Constitution, from which it is empowered, fails in it's most basic mandate. The protection of these United States and the Constitution for which it stands.

Respectfully submitted,
November 8th, 2004

Brian Kilcullen, *pro se*
1208 Seminole Drive
Ft. Lauderdale, Florida, 33304
Tel: (954) 772-0200

I, Brian Kilcullen, swear that the statements and facts herein, are true and correct to the best of my knowledge and supported by numerous documents and evidence within my possession, on today's date of November 8th, 2004.

Brian Kilcullen

The foregoing instrument was acknowledged before me this 8th day of November, 2004, by Brian Kilcullen, who ~~is personally known to me~~ produced.

Signature

Notary Public, State of Florida

JUAN CARLOS HERRERA
MY COMMISSION # DD 19
EXPIRES: March 31, 20
Bonded Thru Notary Public Under

K424-061-56-441-0
FL DRIVER'S LICENSE

APPENDIX A

18 U.S.C. § 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

APPENDIX B

SA Consavage Deposition Excerpt:

Page 36, Lines 1 thru 9.

A I think under the circumstances, we are obligated to find out what occurred. Seeing as the plane was advertised as having no logbooks, two pieces of avionics and in fact, apparently was sold with full logbooks and all the avionics, therefore, the Customs Service did not, in my opinion, obtain the money it should have at the auction, because I believe if the plane had been advertised with all the avionics and with all current logbooks, it would have sold for more than $365,000.

Page 90, Lines 16 thru 21.

A My opinion is that EG&G would have to take a look at the way this whole thing happened and Jerry Hawkins being his supervisor and being in the meetings where Dent described what he did with the transfer of inventory to one seizure to another, didn't document it or tell Customs, didn't show it to anybody, I mean, this just doesn't make any sense.

APPENDIX C

November 1, 2004

Office of the Solicitor General
950 Pennsylvania Avenue, N.W.
Room 5614
Washington, DC 20530-0001
(202) 514-2217

Attn: Paul D. Clement - Acting Solicitor General

Ref: 04-197 Brian Kilcullen v. Guy Lewis, et al.

Dear Sir, You were provided copies (6) of a Petition for Writ of Certiorari some time ago, for the above styled case. This case involves a number of individuals and entities, comprised in part of federal employees, both past and present, of the Departments of Justice, Treasury and Homeland Security. Whose interest, in addition to that of the United States of America, you now represent.

The other named defendants, comprise a criminal element whom those named federal defendants, you now represent, have agreed to and historically have, protected from criminal prosecution for enumerable violations of federal criminal statute. To include, but not limited to, predicate acts of Mail Fraud, Wire Fraud, Schemes to Defraud, Purloining of Government Property/Assets, Obstruction of Justice, False Statements to Federal Agents, Obstruction of a Criminal Investigation, Violation of Constitutional Rights and Conspiracy. All historically frozen in time throughout the seven (7) years this pursuit of justice has taken. You are being advised of this, at this point in time, because this criminal enterprise and it's Racketeering acts has risen to the level of the Supreme Court of the United States and it is believed, not only inappropriate, but a violation of all this country stands for and

upon which it was formed, for you, the Acting Solicitor General of the United States to permit such frauds, schemes and violations to go before this high court.

On October 27th, 2004, EG&G, et al. did respond to this Petition for Writ of Certiorari, by sending through the US Mail, a Response, with statements of fact, known at the time of it's writing, to be false and fraudulent, for the purpose of dodging both criminal and civil liabilities for violations of federal statute, perpetrated by it's employees and others. All pursuant to a criminal conspiracy, entered into some seven (7) years ago, with those named federal defendants you now represent. (See attached Brief & Affidavit of Service, which does not show the ASG being served)

The following falsities and misrepresentations, to include but not limited to, Neil Linden's & Jack Reiter's statements and representations, that Brian Kilcullen's proclamations are without merit, are false, known to be false when written and put forth for an improper and illegal purpose.

Page 1: "The aircraft was originally advertised for sale at the auction without a complete set of logbooks or avionics." This statement is directly contradicted by EG&G's own advertising, which states that there are "No Logbooks". It is put forth, with the deliberate and criminal intent of creating in the reader's mind the impression that there existed missing inventory, which was properly represented. Which, both you and I know, is not the case. As, the inventory for the subject aircraft, N802ME, was known to be complete by both the EG&G and Federal Defendants, at that time. And, any cursory examination of the exhibits in this action or evidence within your possession and control, would clearly show said advertising and this representation to be a known falsity.

Page 2: "After purchasing the aircraft, SkyKnight obtained possession of the log books believed missing and attempted to sell the aircraft with a complete set of logbooks for profit."

This statement is put forth to supplant the impression with the reader, that I, Brian Kilcullen came into possession of this missing inventory by means other than by EG&G, when it is known to both the EG&G and Federal Defendants, that said inventory was provided as part of the sale. Thereby, placing myself, Brian Kilcullen, in possession of "missing inventory", when actually, no such anomaly existed. Once again, any examination of the exhibits in this action or evidence within your possession and control, would clearly show this representation to be a known falsity.

(BRIEF IN OPPOSITION FOR RESPONDENTS (EG&G) - October 27th, 2004)

The rest of EG&G's Brief, like the frauds perpetrated in the lower courts, capitalizes on these misrepresentations, in order to facilitate the invocation of it's affirmative defenses of Standing, Limitations and Pleading. The reader(s) of this Brief are led to believe, that EG&G properly represented the subject aircraft, N802ME at auction, with missing logbooks and avionics and that I obtained these supposedly missing logbooks and avionics, after the sale, by some other means other than by the hands of EG&G. Thereby, somehow being responsible for causing myself injury in the subsequent seizure, of which this case revolves about. All false. All known to be false. And put forth, in order to facilitate an extrinsic fraud.

The exhibits, attached to this action, are replete with documentation, which show this to be an utter impossibility and further evidence of fraudulent misrepresentation in this matter. Permitting EG&G to misrepresent their deliberate and criminal withholding of material knowledge and evidence, as mere

discovery violations.

All done so, with the Department of Justice's assistance. For EG&G, can only make these false statements, misrepresentations and frauds, with federal law-enforcement's approval. As, US Customs, Department of Treasury, Department of Homeland Security and the Department of Justice, like myself, all hold the material knowledge and evidence to the contrary, which they (USA) have historically concealed as well.

The Solicitor General of the United States of America, represent the United States. The Solicitor General's chief business is not to achieve victory, but to establish justice. As quoted from the ASG's web-site:

> But so long as Solicitors General apply the principle best articulated by my predecessor Frederick Lehmann -- that "[t]he United States wins its point whenever justice is done its citizens in the courts"(113) -- and so long as Solicitors General maintain fidelity to the rule of law, it will continue to be true, as Francis Biddle wrote following his tenure in the office, that "[t]he Solicitor General has no master to serve except his country."

You cannot, in good-faith and conscience, permit such frauds and deceits, as clearly evident in the EG&G Defendants' Brief, to be put forth before the Supreme Court of the United States. To do so, is to directly and unequivocally link the interest of the United States of America to the protection of those known to have perpetrated criminal fraud, against the United States of America. Likewise, your silence (Waiver of Right) in this matter will facilitate this fraud, forever linking the United States of America to the deliberate and criminal furtherance of a criminal organization, by standing silent in order to protect those afore mentioned federal defendants. Federal defendants, whom have clearly conspired and acted in concert with these (EG&G) criminal elements.

Whatever, tactics and plausible deny-ability, you may think you have available to you, you should seriously reconsider. I, Brian Kilcullen, the Plaintiff/Appellant/Petitioner, have the material knowledge, which only a victim of the afore stated frauds/deceits & conspiracies can have. It is mine to do with what I wish. And, I wish to divulge, for all America and the world to see, that which is clearly evident.

Your subordinates have adopted the tactics of concealment, denial/deprivation, fraud and silence. Firstly, they tried to conceal that, which only they knew. Secondly, they outright lied and perpetrated fraud on the courts, in order to obstruct and deny. And, lastly, they fall silent, hiding behind closed doors, in a lame attempt to hold on to some plausible deny-ability. Which will be their undoing.

For, I can and will pursue this matter, in whatever forms I wish. It does not matter for the eventuality of this criminal matter, the granting of Brief by the Supreme Court of the United States. Naturally, it would be to the United States of America's and it's citizens benefit, but if your's and EG&G's frauds should prevail, at this level, then consider this.

The Supreme Court will not be the End, but the Beginning of the End. For, when the United States of America, represents the interest of those known to have defrauded the United States of America and those (EG&G) whom they act in concert with, then the United States of America, is as criminal as those whom they protect. And, the Constitution of the United States, from which the Judiciary is empowered, is merely a relic of days gone past and criminally put forth as an facade and fraud, by which the government seeks it's citizens agreement. For, the United States Government, like any other government, only exists by the agreement of it's citizens to it's constitutional mandate. Which without, said government evaporates into civil distrust, civil disobedience and ultimately open dissension and revolt.

And all, you sir, the Acting Solicitor General of the

United States of America, like that of your subordinates before you, will be able to do, is to stand silent, hide and conceal that which you possess. The evidence, which those before you and those whom you represent have not and cannot reveal. For it's existence, documents, confirms and convicts all those named and unnamed.

Bring to the attention of the Supreme Court of the United States and any and all federal law-enforcement entities, the violations of federal statute taking place within this case and matter, immediately! Do it now! Do it not and the melee that results, lies with you sir.

For, I, Brian Kilcullen, born on December 1st, 1956 in Oakland, California have inalienable rights. This is my home. I have the right to that which is mine. I have the right to my property, my business and family's well-being. I have the right to be free from unlawful and unjust invasions of my privacy and life. I have the right to hold those responsible for tort and injury, liable. And sir, I have the right to live free from threat and intimidation. Which, if you believe nothing else, believe this. I have been threatened. I do believe my life and that of my family's is in jeopardy. All for merely trying to assert these inalienable rights. By, both those civil, as well as, federal components named herein this action. It is irrelevant what you think. It is irrelevant what your subordinates think. I am the one in possession of the material knowledge and evidence which places me in harm's way. Knowledge and evidence, which if not for the criminal acts of others, I would not have.

Your subordinates, in an all-out attempt to prevail, have abrogated the judicial process. They, now you, are utilizing the sovereign powers of these United States to abrogate the judicial process. The ultimate down-fall of this government, will be yourselves. For, you sir and all those whom have abused the rules, powers and discretions, we the People of these United States, have and do grant you, are the architects of this travesty. Permit it to continue and this is where it will end.

EG&G/Butler Defedants:

If this criminal fraud is permitted to continue, then I, Brian Kilcullen, will make unnegotiable demands of these defendants, for any and all monetary damages, for which they are known to be liable. If these defendants are permitted to hide behind the United States of America then these demands, will be directed towards the United States government.

Any retaliations or threats, perceived or otherwise by these defendants, will escalate this matter to the violence, of which I have no doubt, will result.

Federal Defendants:

If this criminal fraud is permitted to continue, then I, Brian Kilcullen, will make unnegotiable demands of the United States government, for any and all monetary damages, for which those named Federal Defendants, are known to be liable. As stated above, should the United States stand firm in it's protection of these other defendants (EG&G - Butler), then the United States will be liable for any and all damages incurred by their co-conspirators acts as well.

Any retaliations or threats, perceived or otherwise by these defendants, will escalate this matter to the violence, of which I have no doubt, will result. Thereby, cementing the downfall of the United States of America, which our founding fathers envisioned and formed.

This criminal enterprise, of which you are on the verge of permitting to contaminate the entire United States of America, has abrogated the entire civil and criminal justice system If you want/ed to permit the system to work, than you will/would permit it to do so. In the absence of the civil process and the Constitution of the United States, from which it is born, my inalienable rights do not evaporate into thin air. They are mine to do with what I wish. And, since the defendant parties do not wish to sit down to the table and litigate, mitigate or adjudicate the facts of this criminal matter, then we will deal

with them on a different level.

EG&G perpetrated fraud where they believed, rightfully so, that they could get away with it. Terrence Thompson, Laurie Rucoba and the federal agents involved, entered into said conspiracies, because they believed, once again, historically proven, that they would be protected. And, now the United States of America, under your representation sir, has the utter gall to come before the highest court in the land, with the convoluted position of representing those whom have and are defrauding the United States, as well as, the interest of the United States whom they (Federal Defendants) have defrauded. A paradox of unbelievable unmitigated arrogance. What must you think of the People of these United States. How ignorant and naive do you think we are.

I can assure you, that even though you and your associates, can easily misrepresent and conceal the truth, the citizens of these United States will not be so easily deceived. And, unless you can offer up evidence and answer the questions which will be put forth, then they, like I, will see that which is evidenced. That they, like I, do not have a 4th Amendment Right to be free from search and/or seizure of person or property, without probable cause. And, that they, like I, will not have available to them, these courts and officers, whom hold their 5th Amendment Right to Due Process of Law at bay. Cementing the factual truth, that the Constitution of the United States is a fraud.

This letter is being provided to all relevant parts of the United States government so that they are informed as to the criminal positions you have placed them in. As such, they are duly notified, that any actions taken against myself, will be viewed as further criminal acts, perpetrated by a criminal organization. It is irrelevant what you, the Department of Justice, the judiciary or any agents think and/or believe. I have unequivocal proof and material knowledge of the criminal enterprise, of which I speak. Therefore, all United States government employees, to include but not limited to, law-

enforcement, whom hide behind closed doors, refuse to investigate and/or prosecute this criminal matter, are viewed as potential threats to my life, liberty and/or business interests. And any actions taken against myself will be viewed as that which I know them to be. Criminal acts which I have the right to fight against. And, since the judiciary is now, nothing more than an extension of this criminal enterprise, than the courts are not an option. There but remains my dissension, disobedience and revolt. By any means possible.

Remain silent and I, Brian Kilcullen, will indict you, your department and the United States Government for the treasonous action and inaction you have perpetrated to date. Your refusal to act, pursuant to your mandate as the Solicitor General of the United States, relegates the Rule of Law, non-existent. Your silence speaks volumes. Your dereliction of duty, cries fraud! Your convoluted and misguided ploys and illegal maneuvers scream for revolt.

So help me God, this cover-up will fall or I will die trying in this pursuit.

So say I, Brian Kilcullen, on this 1st day of November, 2004.

Sincerely,

(Signed/ Brian Kilcullen)

Brian Kilcullen
Tel: (954) 772-0200

cc: ABC News
President of the United States

Attorney General
Congress
Department of Homeland Security
Department of the Treasury
Internal Revenue Service
Customs & Border Protection
Immigration & Customs Enforcement

(3)

Supreme Court, U.S.
FILED
DEC 2 3 2004
OFFICE OF THE CLERK

No. 04-197

In The

Supreme Court of the United States

Brian Kilcullen

Petitioner

v.

Guy Lewis, et al.

Respondents

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Eleventh Circuit

PETITION FOR REHEARING

Brian Kilcullen, *pro se*
1208 Seminole Drive
Ft. Lauderdale, Florida, 33304
Tel: (954) 772-0200
Fax: (954) 567-4941

CERTIFICATION

I, Brian Kilcullen, the Petitioner, hereby certify that this Petition for Rehearing, is restricted to the grounds specified in Supreme Court Rule 44.2 and that it is presented in good faith and not for delay.

Brian Kilcullen, *pro se*
December 23rd, 2004

CONSTITUTIONAL PROVISIONS, STATUTES & REGULATIONS

The 5th Amendment of the United States Constitution, for the Right to Due Process of Law, when subjected to the invasion of one's constitutionally protected Rights.
(Full & Fair Hearing)

18 U.S.C. 1341 "Mail Fraud"

American Bar Association ABA 3.3 & Florida Rules for Professional Conduct FL-R 4-3.3(a)(b)(c)(d) Candor Toward the Tribunal

American Bar Association ABA 3.4 & Florida Rules for Professional Conduct FL-R 4-3.4 (a)(b)(c)(d)(f)(g)(h) Fairness to Opposing Party and Counsel

American Bar Association ABA 4.1 & Florida Rules for Professional Conduct FL-R 4-4.1 (a)(b) Truthfulness in Statements to Others

American Bar Association ABA 8.4 & Florida Rules for Professional Conduct FL-R 4-8.4 (a)(b)(c)(d)(f) Misconduct

PETITION FOR REHEARING

Pursuant to Rule 44.2 of the Supreme Court Rules, I, Brian Kilcullen, hereby Petition the Supreme Court of the United States to Reconsider it's DENIAL of the Petition for Certiorari (04-197).

On December 14th, 2004, I was appraised by James Bolden, a Clerk of the Supreme Court, that Justice Rehnquist was not a participant in the Conference of November 24th, 2004, which considered this Petition for Certiorari (04-197).

Justice Rehnquist, being the Chief Justice of the Supreme Court of the United States, is at this point in time, the highest judicial officer of the United States. Likewise, he heads the Judiciary and is responsible for the conduct and processes of all courts of the land. Therefore, it is requisite that he be appraised of the frauds, deceits and schemes which have taken place in this case and the fraud on the Court, taking place in this Petition.

The nature and controlling effects of this subject matter mandate the review of the entire Court and in particular the head of the Judiciary. In the Chief Justice's absence, this Writ for Certiorari and the allegations of criminal fraud and deceit perpetrated upon this Court, should await his return or in the alternative, his replacement.

It is contrary to this Court's mandate and powers to decide this Petition otherwise.

RECORD

I, Brian Kilcullen, the Petitioner, submitted this Writ for Certiorari on June 4th, 2004. Said Writ outlined a unique and dangerous fraud scheme and enterprise operating within certain departments of the United States government. Factual contentions and criminal acts, which I witnessed and have evidence of, were sworn to under oath by myself, in said Writ and sent by US Mail to the Court and all relevant parties.

On August 23rd, 2004, the Butler Defendants, under the representation of counsel, Richard Giuffreda, waived their rights to respond, thereby, pursuant to Supreme Court Rule 15.2, un-contesting the criminal acts attributed to themselves in this matter. (Writ of Certiorari, page 10, #14 - pages 11, 12, 13 & 14, #2, #3, #5 & #9)

On September 1st, 2004, the Acting Solicitor General, Paul Clement, made appearance as counsel, but in spite of being supplied the court Waiver Form, supplied by the Clerk of the Court, in violation of Supreme Court Rule 9.2, supplied a Waiver to Respond, not indicating whom he represented.

The Writ clearly brings into question the constitutionality of federal statute (Writ for Certiorari, Questions Presented for Review, #1) and the ASG, being duly served, would naturally represent the interest of the United States of America. Likewise, a number of the defendant parties (Federal Defendants) are or were federal employees in this subject matter.

As such, I queried the Clerk of the Court as to whom the ASG was representing. Unable to do determine such, the Clerk directed me to contact the ASG's Office directly, which I did. I was contacted by an AUSA Greenspan (DOJ Appellate Division), whom explained that it was he whom advised the ASG to not respond and that the ASG was representing the

interest of both the United States of America and the Federal Defendants. (See Appendix)

Nevertheless, the ASG, representing the interest of the United States of America, made appearance as counsel for both the United States and those named federal defendants, whom are sworn to have and are presently conspiring to defraud the United States of America. A conflict of interest pursuant to the ABA Rules of Professional Conduct.

Likewise, the ASG's decision to not respond to the factual allegations within the Writ for Certiorari, per Supreme Court Rule 15.2, let's stand the criminal allegations attributed to said Federal Defendants uncontested. (Writ for Certiorari - pages 13 & 14, #6 thru #11)

On October 27th, 2004, the government contractor in this matter, attested to have defrauded the United States Department of the Treasury (US Customs & IRS), whom the federal defendants have historically protected from prosecution, filed their (EG&G Defendants) Response, directly contradicting the factual contentions of the Petitioner's.

On November 8th, 2004, I, Brian Kilcullen, filed a Reply, which outlined the following. (1) EG&G's Response constitutes a violation of 18 U.S.C. 1341 (Mail Fraud). (2) That EG&G and counsel had violated Supreme Court Rule 29.3-4 by not serving the ASG with their Response and (3) that I, Brian Kilcullen, had served upon the ASG, the EG&G Response and a letter outlining the blatant false statements therein and his (ASG) duty to report said frauds to the Court and the proper federal authorities.

On November 22nd, 2004, I, Brian Kilcullen, amended my Appendix (Reply) and provided a copy to the Clerk of the Court for distribution. Said Amendment, depicts what appears to be the ASG's response to Appendix C of my Reply, the afore

mentioned letter to the ASG and a follow up letter, chastising the Solicitor General for refusing to bring to the attention of this Court and the proper federal authorities, the deceits, frauds and scheme of the EG&G Defendants.

The Court DENIED this Petition on November 29th, 2004.

FRAUD SCHEMES

The Writ for Certiorari in this petition, clearly stated, per Supreme Court Rule 10 (a) (Writ for Certiorari, page 15 - Argument), that the inferior courts had so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's supervisory powers.

As evidenced in the Questions Presented for Review (#5), it was raised that all courts should be mandated to investigate all judicial misconduct, alleged to have occurred in the course of judicial proceedings.

Here we have, not only clear and unequivocal violations of the this Court's Rules, but the sworn testimony of the Petitioner, stating that fraud has been perpetrated on the Court. That said fraud constitutes a violation of federal criminal statute, yet the Supreme Court, like the inferior courts below, denies said Petition and takes no steps or action to investigate the allegations before it.

No matter what the determination of fact, the contradictory statements of the Petitioner and EG&G clearly point to fraud on one party or the other. There exist no middle ground. Whether on Professional Code or criminal statute grounds.

The Writ for Certiorari clearly states that this matter revolves about a complex and convoluted crime. One which may be hard to follow or accept. But, nevertheless, a complicated and well-concealed crime is no less worthy of

investigation/prosecution than a simple or transparent one.

The Rules which the inferior courts have consistently ignored in this matter and which would prevent the deprivation of a constitutional right, are the ones which would permit a citizen to investigate an alleged tort and/or crime. The purpose and significance of permitting such, with respects to the 5th Amendment Due Process Clause, is paramount. Concealment of a tort/crime does not make it disappear. Does not relieve the victim or society of it's ill effects. And, more importantly, does not permit the judicial system to operate as intended. Quite to the contrary, it abrogates the judicial system and ultimately the judiciary itself completely. Thereby, undermining it's purpose and relegating the rule of law and Constitution of the United States, non-existent.

Each and every fraud perpetrated upon these courts, chips away at our civil society and the very foundation upon which it rests. The refusal of the inferior courts to investigate the frauds alleged to have been perpetrated upon them is unacceptable. The refusal of the Supreme Court of the United States, the highest court in the land, to investigate the frauds being perpetrated upon it, in this matter and Petition undermines the very foundation upon which it stands. To tolerate fraud, transparent or otherwise, reduces these courts and ultimately the judiciary itself, to extensions of criminal enterprises whom seek to further their unlawful and unconstitutional schemes by use of those instruments designed to combat them.

Here we have the United States Department of Justice (ASG, Criminal Division, Civil Division & FBI) standing by idly, whilst EG&G enacts it's fraud scheme to defray both civil and criminal liabilities, on the Supreme Court of the United States. I have sworn out numerous criminal complaints against this criminal organization and have yet to have any federal law-enforcement agency or agent query me as to my entire knowledge and evidence. Including the FBI.

Doors are locked in front of me. Special Agents, suddenly, are unavailable. Repeated messages to return phone calls are ignored. Agents outright admit that they would like to respond, but state that they do not want to see their names on court documents. Lawful FOIA requests are ignored. How clear can this be.

If, I, Brian Kilcullen, had knowledge of terrorist activity (which I do not) about to be perpetrated upon these United States, it would go unhindered by the law-enforcement forces of this county. Not because I would not try to appraise these federal law-enforcement agencies of such, but because, to date, no federal agent(s) will sit down and listen to what I have to say. By virtue of the fact that I hold knowledge and evidence of criminal activity on the part of government officials, I am essentially an "Enemy of the State". No agency, nor government official can permit me to divulge that which I know to be true and it is imperative, as evidenced by the ASG Letter to the FBI, complaining of "possible threats against government officials", that I am to be discredited as well.

Nowhere in the ASG response, to my November 1 letter, does it mention EG&G or the blatant false statements placed before the court by them.

As stated in the Writ for Certiorari (Abuse of Discretion, pages 25 & 26), it is not only what these federal officials do, but more importantly, what they refuse to do. By abuse of their discretion, they abandon their post all together and in concert with those whom have and are defrauding the United States of America (EG&G), enact a criminal scheme which undermines the Rule of Law and threatens the very foundation upon which this Country stands.

If we, as a civilized society, are to be bound by the Rule-of-Law, then so be it. Let us abide by the Rules. All the Rules. Not just those which are opportune or serve some ulterior purpose.

This Court, just as those inferior courts from which this Petition is taken, is being undermined and utilized by those whom would jeopardize this nation for their own personal gain. To permit them to do so, is to abandon all that which we, the United States of America, stand for and upon which this Nation and this Court is empowered.

The Constitution of the United States of America is not a grant of power, nor mandate of enlightenment, but an illumination of that which all men should take note of. That to stray from those inalienable rights, which all men enjoy or to permit such infringements, is to endanger the very fabric of that which holds and binds us together. Abandon the Constitution of the United States, for whatever the perceived reasoning or processes and invite the open dissension and revolt which gave birth to this Nation in the beginning!

The Chief Justice of the Supreme Court of the United States, the ultimate authority for the Judiciary, it's processes and conduct is requisite to the determination of this Writ and allegations of fraud and deceit before this Court.

The Clerk of the Court should not permit this Petition to be reheard until such time as the full Court is in session. In particular, the Chief Justice of the Supreme Court, in his individual capacity.

Respectfully submitted,
December 23rd, 2004

Brian Kilcullen, *pro se*
1208 Seminole Drive
Ft. Lauderdale, Florida, 33304
Tel: (954) 772-0200

I, Brian Kilcullen, swear that the statements and facts herein, are true and correct to the best of my knowledge and supported by numerous documents and evidence within my possession, on today's date of December 23rd, 2004.

Brian Kilcullen

The foregoing instrument was acknowledged before me this 23 day of December, 2004, by Brian Kilcullen, who is personally known to me.

Signature _____
Notary Public, State of Florida

October 18, 2004

Office of the US Attorney
Appellate Division
Department of Justice
Washington, DC
Fax: (202) 514-8151

Attn: AUSA Bob Greenspan

Ref: 04-197 Kilcullen v. Lewis, et al.

Dear Sir,

Attached is a fax sent to the Clerk of the Supreme Court for your records.

Sincerely,

Brian Kilcullen
Tel: (954) 772-0200
Fax: (954) 567-4941

October 18, 2004

Supreme Court of the United States
Office of the Clerk
1 First Street NE
Washington, D.C. 20543
Fax: (202) 479-3230

Attn: Donald Baker

Ref: 04-197 Kilcullen v. Lewis, et al.

Dear Sir,

Pursuant to the conversation we had regarding the above styled case, with respects to whom the Acting Solicitor General represents, I telephoned the ASG's Office for clarification.

After placing a call to the ASG's Office, I, Brian Kilcullen, was contacted by Assistant United States Attorney Bob Greenspan, of the Washington Appellate division of the Office of the US Attorney. Mr. Greenspan relayed to me that he had read the Writ for Certiorari, was familiar with the case and that the Waiver of Right, dated September 1st, 2004, supplied to myself and the court, was a Waiver for both the United States of America and the federal defendants, Guy Lewis, Terrence Thompson, Laurie Rucoba, Howard Weintraub, John Devaney, Michael Consavage and Michael Palmer's rights to respond to the Petition for Writ of Certiorari. And that the Acting Solicitor General would represent the interests of the both the United States of America and those named federal defendant's in this case/Petition, should this case be heard by the Supreme Court.

Thank You for your cooperation.

Sincerely,

Brian Kilcullen
Tel: (954) 772-0200
Fax: (954) 567-4941